Arbitrator Rules That Teachers Are Not Entitled To Additional Paid Days For Religious Observances

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Limestone District School Board v Elementary Teachers' Federation of Ontario Limestone Local

In *Limestone District School Board v Elementary Teachers' Federation of Ontario Limestone Local*, a decision released on November 14, 2017, Arbitrator William Kaplan stated that providing a number of paid Personal/Family Leave days per school year to all teachers constituted reasonable accommodation for teachers requiring leave for religious holidays on scheduled school days. The teachers were not entitled to paid time off without drawing from their Personal/Family Leave bank.

Background

The Elementary Teachers' Federation of Ontario ("the Federation") filed policy and individual grievances regarding leave for religious holidays on behalf of elementary teachers employed by the Limestone District School Board ("the Board").

The Board had previously permitted teachers to take paid time off for religious holidays scheduled during school days, without deduction from personal leave or any other type of leave under the collective agreement.

However, around the time of the 2015/2016 round of local collective bargaining, the Board changed its practice. The Board's new position was that time taken off for religious holidays would now constitute Personal/Family Leave under Article L18.1.0 of the collective agreement, which provided: "Personal/Family leave may be granted for reasons which are unavoidable or extraordinary to total of five (5) days per school year."

While there was a dispute about whether the Board had advised the Federation of this upcoming change, the Board's position became clear when one teacher was required to take a day of Personal/Family Leave in order to observe Diwali. The Federation filed policy and individual grievances as a result.

Submissions of the Parties

Federation

The Federation argued that the Board's policy amounted to adverse impact discrimination, and that the duty to accommodate triggered by this discrimination had not been satisfied.

The Federation argued that while the Board's school calendar was neutral on its face, like all public school calendars it was built around Christian holidays, and this resulted in an adverse impact on teachers who wished to take time off for non-Christian religious observances.

According to the Federation, providing Personal/Family Leave days under Article L18.1.0 was not a reasonable accommodation because it required teachers belonging to religious minorities to deplete their Personal/Family Leave bank for religious reasons, leaving them with fewer Personal/Family Leave days available for emergencies in comparison to Christian teachers.

Board

The Board did not dispute that Federation teachers were entitled to take time off for religious observance, but argued that the existing collective agreement entitlement to Personal/Family Leave in Article L18.1.0 constituted reasonable accommodation.

In the Board's view, the Board was not required to pay for work that would not be performed when a teacher took time off for religious reasons during a scheduled school day. The Board argued that the Federation was seeking a result unrecognized by law in asking for payment for no work and that the parties had specifically negotiated Article L18.1.0 as a mechanism for accommodating individuals who would require paid leave on a regularly scheduled school day.

Decision and Analysis

Arbitrator Kaplan concluded that while adverse impact discrimination had been established, the paid leave available through Article L18.1.0 constituted reasonable accommodation because it appropriately balanced the Board's duty to accommodate against a teacher's obligation to attend work in return for remuneration. Accordingly, he dismissed the Federation's grievances.

In coming to his conclusion, Arbitrator Kaplan found that the flexible language of Article L18.1.0 was clearly drafted and designed to make up to five paid days off available for a wide variety of accommodation purposes, including religious observances.

Since it was not possible for the teachers to make up the work at another time (because the school day scheduled is fixed), the teachers were effectively asking to be paid for not working. Arbitrator Kaplan noted that it is well-accepted that employees should be paid for working, and not paid for not working — and therefore, the Board was not obliged to follow its past practice of allowing teachers to take paid time off for religious observances. There is no authority for the proposition that an employer must provide paid leave for religious observance.

He also commented that there was no jurisprudence to support the idea that requiring employees to deplete a leave bank, designed to provide paid time off in various accommodation circumstances, was a violation of the Ontario *Human Rights Code*.

As a final remark, Arbitrator Kaplan stated that while it is conceivable that a case might arise where a teacher requires more than five days of paid leave for religious reasons during a school year, that case should be decided on a different day, if and when it does arise.

Arbitrator Kaplan's decision confirms that reasonable accommodation does not always require placing an employee who experiences adverse effects in the exact same position as other employees. In the factual context of this case, it was sufficient for the Board to provide paid Personal/Family Leave days to be used for religious accommodation purposes, even if it meant that their Christian co-workers did not use as many Personal/Family Leave days for religious observances.

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