CUPE v. CTA: Understanding the relationship between sick leave and disability benefits

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In a recent central arbitration award, *Canadian Union of Public Employees (CUPE-OSBCU) v. Council of Trustees' Associations*, 2023 CanLII 122852 (ON LA), Arbitrator John Stout addressed the interaction between short-term and long-term disability benefits in school board collective agreements.[1]

Key takeaways

- At the end of the LTD benefits waiting period, employees must move to LTD benefits, even if they have not yet exhausted more generous STD benefits.
- Absent clear language to the contrary, sick leave, STD, and LTD plans should be viewed as a seamless flow of benefits. Employees are precluded from choosing which benefits they receive once they become eligible for benefits under an LTD plan.
- Providing different levels of compensation to different groups of employees is not in and of itself discriminatory.

Background

The Canadian Union of Public Employees (CUPE) referred two central disputes with the Council of Trustees' Associations (CTA)[2] to arbitration. Those central disputes involved the payment of benefits to employees at the Northeastern Catholic District School Board (Northeastern CDSB) and Trillium Lakelands District School Board (Trillium Lakelands DSB). The CTA is the designated employer bargaining agency for Ontario school boards with CUPE collective agreements for the purposes of the *School Boards Collective Bargaining Act, 2014*.[3]

The central terms and LTD plans

The central disputes addressed the relationship between sick leave, STD and LTD benefits under the two school boards' collective agreements. As a result of the interaction between the central terms for sick leave and STD benefits, and the local terms regarding LTD benefits, there was a potential overlap between the employees' entitlement to STD and LTD benefits. In those circumstances, CUPE argued that the

employees should be able to elect to receive STD benefits, which were payable at higher percentage of their wages than LTD benefits, for the period of the overlap.

The CUPE central terms provide for up to 11 sick days paid at 100 per cent of salary and for up to 120 days of STD leave paid at 90 per cent of salary, both based on working days. It is common for LTD plans for CUPE members to have a 120-day waiting period, but the school boards in this award had different waiting periods.

Northeastern CDSB's LTD plans had waiting periods of 90 calendar days, after which LTD benefits were payable to qualifying employees. The LTD plans would pay 60 per cent or 66 per cent of wages to those employees. The issue at this school board was that employees could become eligible for LTD benefits before they had exhausted their STD benefits.

Trillium Lakelands DSB's LTD plan, on the other hand, had a waiting period of 200 calendar days. If an employee was still waiting for a decision on their LTD eligibility after 131 days of paid sick leave/STD days, Trillium Lakelands DSB continued to provide STD until the 200-day waiting period had expired. The LTD plan paid eligible employees 60 per cent of eligible earnings. The issue at this school board arose as a result of an employee's illness spanning over the summer months, during which STD benefits were not payable. As a result, the employee had completed her LTD waiting period even though she had not exhausted her STD benefits.

CUPE's position

CUPE's position was that employees must be able to elect to exhaust their STD entitlements before moving to LTD benefits. CUPE raised a scenario in which an employee could be approved for LTD benefits and be worse off during the overlap period between STD and LTD when compared to an employee who was denied LTD and continued to receive STD benefits. CUPE also argued that to interpret the collective agreements otherwise raised a violation of the Ontario *Human Rights Code*.[4]

CTA's position

The CTA argued that sick leave and STD benefits were intended to provide a bridge to LTD benefits, such that if the local LTD plan had a waiting period that was less than 131 working days, and an employee became eligible for LTD benefits prior to the exhaustion of STD benefits, the LTD policy would become the first payor and the STD benefits would no longer be payable.

The award

Arbitrator Stout concluded that employees do not have the right to exhaust their sick leave and STD benefits prior to receiving LTD benefits. In addition, he stated that employees who have applied for and are entitled to receive LTD benefits are not entitled to sick leave or STD benefits, except for the limited exception under the central terms for a graduated return to work program.

In arriving at his conclusion, Arbitrator Stout relied closely on the language of the central terms. He placed considerable emphasis on the provision in the central terms that stated, "Employees receiving benefits under the *Workplace Safety and Insurance Act* or under a LTD plan, are not entitled to benefits under a school board's sick leave and short term disability plan for the same condition." According to Arbitrator Stout:

> The parties did not explicitly address whether an employee may draw upon and exhaust their sick leave and STD allocation prior to receiving LTD benefits. Frankly, it would be unusual to provide such a benefit to employees. I find, reading the language as a whole and in context, that employees do not have a right under the Central Terms to draw upon and exhaust their sick leave and STD allocation prior to receiving LTD benefits. One would expect that sophisticated parties, such as those in this case, would have clearly stated the non-normative entitlement of an employee to exhaust their sick leave and STD allocation prior to receiving LTD benefits payable under Local Terms.

Arbitrator Stout also dismissed CUPE's argument that because LTD and STD benefits were payable at different rates, the *Human Rights Code* required that employees should be entitled to exhaust their STD benefits before moving to LTD benefits. He held that there was no evidence of any employee being treated worse as a result of receiving LTD benefits, and that STD and LTD benefits served different purposes (short-term income protection versus additional income replacement for longer-term absences). Arbitrator Stout also considered the policy implications of CUPE's argument:

> In my view, from a policy perspective, it would be absurd to make a finding that providing different compensation for short term and long term disabilities is discriminatory as it would detract employers from negotiating such benefits, which assist employees who are disabled by providing income replacement benefits. Employees entitled to LTD benefits are not being unfairly disadvantaged because of their disability. Instead, these employees are being provided additional income replacement benefits for an extended period of time when they are unable to return to work.

Implications

This arbitration award illustrates the careful attention that an arbitrator will pay to the language of the collective agreement, as a whole and in context, in determining the intentions of the parties. An arbitrator may also consider the broader context in interpreting collective agreement provisions. In this case, the Arbitrator observed that it would be unusual to let an employee decide, based on benefit rates, when to commence LTD benefits, and held that in such circumstances he would have expected very specific language to that effect.

Arbitrator Stout's award also addressed the argument that, by providing different levels of benefits to disabled employees in different circumstances, the collective agreements could contravene the *Human Rights Code* by discriminating on the basis of disability. Arbitrator Stout dismissed that argument for several reasons, including that STD and LTD benefits were forms of income protection for disabled workers that applied in different circumstances.

[1] John-Paul Alexandrowicz and Madeleine Werker of BLG appeared for the Council of Trustees' Associations.

[2] The Council of Trustees' Associations (CTA) is a council of the following Ontario school boards' associations: Association des conseils scolaires des écoles publiques de l'Ontario; Association franco-ontarienne des conseils scolaires catholiques; Ontario Catholic School Trustees' Association; and the Ontario Public School Boards' Association.

[3] *School Boards Collective Bargaining Act, 2014*, SO 2014, c 5.

[4] *Human Rights Code*, RSO 1990, c H.19.

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