

IN THE MATTER OF AN ARBITRATION

BETWEEN:

BC GENERAL EMPLOYEES' UNION

(The "Union")

AND:

PRT GROWING SERVICES LTD

(The "Employer")

(National Truth and Reconciliation Day Policy Grievance)

PRT v. BCGEU

Heard: September 1, 2022

Award: November 4, 2022

AWARD

I. INTRODUCTION

1. The Union grieves that the Employer failed to add the National Day for Truth and Reconciliation ("NDTR") to the list of designated holidays under Article 18.1 of the Collective Agreement.
2. Article 18.1 reads as follows:

18.1 Paid Holidays

- (a) The following have been designated as paid holidays:

New Year's Day	British Columbia Day
Family Day	Labour Day
Good Friday	Thanksgiving Day
Easter Monday	Remembrance Day
Queen's Birthday	Christmas Day
Canada Day	Boxing Day

(b) Any other holiday proclaimed as a holiday by the federal, provincial or municipal governments for the locality in which an employee is working shall also be a paid holiday.

3. The core evidence in this matter was adduced through an Agreed Statement of Facts.

4. The Agreed Statement of Facts states in part:

Agreed Statement of Facts

1. The Union has been the bargaining agent of employees of the Employer who work at forest nurseries in British Columbia since 1988.
2. All of the bargaining unit members are provincially regulated employees. The Union has never represented federally regulated employees of the Employer and has never represented employees of the Employer outside of British Columbia.
3. The Union and the Employer are parties to a collective agreement.
4. At the time of the grievance the collective agreement in place was the collective agreement with a term dating from January 1, 2018 to December 31, 2020 (the "Collective Agreement"). ...
5. Article 18 of the Collective Agreement sets out the Employer's obligations to employees with respect to holidays. Several other articles also touch on holidays.
6. The Collective Agreement reads at Article 18.1:

18.1 Paid Holidays

(a) The following have been designated as paid holidays:

New Year's Day	British Columbia Day
Family Day	Labour Day
Good Friday	Thanksgiving Day
Easter Monday	Remembrance Day
Queen's Birthday	Christmas Day
Canada Day	Boxing Day

(b) Any other holiday proclaimed as a holiday by the federal, provincial or municipal governments for the locality in which an employee is working shall also be a paid holiday.

7. Of the holidays listed in 18.1(a) New Years Day, Family Day, Good Friday, Canada Day, British Columbia Day, Labour Day, Thanksgiving Day, Remembrance Day and Christmas Day are provincial statutory holidays in British Columbia. Victoria Day is also a provincial statutory holiday in British Columbia. The reference to the Queen's Birthday is meant to reference Victoria Day. ...
8. Of the holidays listed or referred to in 18.1(a) New Years Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day are federal statutory holidays in Canada. ...
9. British Columbia Day falls on August 1st, 2022, which is also a designated Federal statutory holiday listed as "Civic Holiday".
10. On June 3, 2021 NDTR was proclaimed as a holiday by the Federal Government.
11. Thursday September 30th, 2021 marked the first NDTR.
12. The Employer did not recognize NDTR and did not apply the provisions of the Collective Agreement to bargaining unit members consistent with September 30th, 2021 being a holiday.
13. On October 26th, 2021 the Union filed a policy grievance alleging that the Employer had violated the Collective Agreement by not recognizing NDTR as a holiday (the "Grievance"). The Grievance seeks a make whole remedy for all members of the bargaining unit effected. ...
14. The Union and the Employer were engaged in collective bargaining on the following dates in 2021: June 22nd, August 12th, September 27th, 28th and 29th, and November 23rd, 24th, 25th, and 26th.
15. On September 29th, 2021 the Union stated to the Employer at the bargaining table that it was their position that according to Article 18.1(b) NDTR must be treated as a holiday for bargaining unit members. The Employer took the position that it did not apply to its employees as it was a federal holiday.
16. On November 23rd, 2021 the Employer made a proposal in its bargaining proposals package to delete Easter Monday from Article 18.1(a). ...
17. That same day the Union made a proposal in its bargaining proposals package that would add NDTR and National Indigenous Peoples Day to the text of Article 18.1(a) and change Queen's Birthday to Victoria Day. The Union stated that it considered the addition of NDTR

and the change to Queen's Birthday to be housekeeping issues and were already captured by the existing language in Article 18.1. The Employer did not agree with the Union's statement. ...

18. At 2pm on November 24th, 2021 the Employer made a proposal to delete Easter Monday from Article 18.1(a) and add NDTR. ...
19. At 6pm on November 24th, 2021 the Union presented a bargaining proposal package that included a proposal to add NDTR to the text of Article 18.1(a) and change Queen's Birthday to Victoria Day. ...
20. The Employer's bargaining proposal package made at November 25th, 2021 at 10am continued to have the proposal to delete Easter Monday from Article 18.1(a) and add NDTR. ...
21. The Union's bargaining proposal package made at 4:30pm on November 25th, 2021 continued to have the proposal to add NDTR to the text of Article 18.1(a) and change Queen's Birthday to Victoria Day. ...
22. On November 26th the parties agreed to leave the language of Article 18.1 unchanged and agreed that whether NDTR was covered by the Collective Agreement would be resolved through the grievance process.
23. Both parties maintained their positions with respect to Article 18.1 throughout bargaining with the Union taking the position that the Collective Agreement compelled the Employer to treat NDTR as a holiday and the Employer taking the position that it was not obligated to do so.

II. POSITIONS OF THE PARTIES

5. The parties agree, by way of paragraph 10 of the Agreed Statement of Facts, that NDTR was proclaimed as a holiday by the Federal Government.
6. The Union submits the parties intended Article 18.1 to add any new statutory holiday proclaimed by the federal, provincial or municipal governments.
7. The Employer submits that the NDTR was designated by the Federal Government as a paid holiday for federally regulated employers and the Federal Government service. The Employer says "that's where it stops" in terms of its application.
8. The Employer states that it is provincially regulated and therefore, this legislative change does not apply.

9. The Employer further submits that the parties must follow the terms and conditions of its Collective Agreement in making determinations regarding paid holidays.

III. ANALYSIS AND DECISION

10. The issue in this matter is whether Article 18.1 of the parties' Collective Agreement operates to qualify the NDTR as a paid holiday.

11. Article 18.1(b) states:

Any other holiday proclaimed as a holiday by the federal, provincial or municipal governments for the locality in which an employee is working shall also be a paid holiday.

12. A number of prior arbitral awards have considered similar language in determining this very issue. I will refer to two of these.

13. In *Olympic Motors (WC1) Corp. (c.o.b. Richmond Subaru) v. International Assn. of Machinists and Aerospace Workers, Local 1857 (National Day for Truth and Reconciliation Grievance)* (Saunders) (November 5, 2021), the Board examined a provision with very similar language to that reflected in Article 18.1.

14. In doing so, the Board states at paras 15 on:

The issue is whether the proviso under Article 11.02, "or any other day proclaimed by the provincial or federal government," operates to qualify the Day [NDTR] as a statutory holiday, in addition to the list of 10 statutory holidays.

This difference lies to be resolved by applying established canons of interpretation. The following re-statement of principles appears in *Pacific Press v. G.C.I.U., Local 25-C*, [1995] B.C.C.A.A.A. No. 637 (Bird) ("Pacific Press"):

The object of interpretation is to discover the mutual intention of the parties.

The primary resource for an interpretation is the collective agreement.

Extrinsic evidence (evidence outside the official record of agreement, being the written collective agreement itself) is only helpful when it reveals the mutual intention.

Extrinsic evidence may clarify but not contradict a collective agreement.

A very important promise is likely to be clearly and unequivocally expressed.

In construing two provisions a harmonious interpretation is preferred rather than one which places them in conflict.

All clauses and words in a collective agreement should be given meaning, if possible.

Where an agreement uses different words, one presumes that the parties intended different meanings.

Ordinarily, words in a collective agreement should be given their plain meaning.

Parties are presumed to know about relevant jurisprudence.

The list of interpretive principles in *Pacific Press* is not exhaustive. I note that the purpose of a provision can be a helpful aid to interpretation. Further, words should be taken in their ordinary and grammatical sense unless that reading leads to uncertainty or an inconsistency with the remainder of the agreement. Following in the same vein, an ordinary and grammatical reading may be unconvincing if the context of the disputed provision--read in isolation and in view of the collective agreement--shows the words were used in a different sense. When confronted with a choice between two viable interpretations of a benefit conferring provision--one that confers the full measure of the benefit and one that does not--it is appropriate to prefer a liberal interpretation that delivers the full measure of the negotiated benefit. Finally--without attempting to be exhaustive--when confronted with a choice between two linguistically viable interpretations, considerations of administrative feasibility may be decisive.

I now turn to consider the language of the disputed proviso as it appears under Article 11.02, read in the context of the entire Collective Agreement. In interpreting that provision, I find that the purpose of Article 11.02 is to confer benefits relating to statutory holidays.

The Employer correctly observes that the Day is not designated a statutory holiday under the ESA or a general holiday under the Holidays Act. Thus the Day does not apply by force of statute to employees of provincially regulated entities, such as the Employer.

Therefore, the issue narrows to whether employees are entitled to the Day by operation of the Collective Agreement. In my view, the answer to this question must be "yes." I find the proviso "or any other day proclaimed by the provincial or federal government" is worded broadly enough to encompass general holidays under the Canada Code. I read the word "proclaimed" to mean "officially declared." The language does not go so far as to confine the

disputed proviso to holidays applicable to provincially regulated employers. I acknowledge that an important promise is likely to be clearly expressed. In my view, the benefit conferred by Article 11.02 meets that threshold. The fact the list in Article 11.02(a) aligns with eligibility criteria under the ESA does not detract from the Union's position. That is because the application of those criteria does not collide with administering the Day as an additional statutory holiday under the Collective Agreement.

For these reasons, **I find the disputed proviso includes holidays proclaimed by the federal government, regardless of whether the Employer is obligated by statute to recognize that holiday.**

As explained above, **I find the disputed proviso unambiguously encompasses holidays proclaimed by the federal government, regardless of whether the Employer is obligated by statute to recognize that holiday. The language at issue is a broadly worded benefit conferring provision, and the Union is entitled to draw upon the full scope of its application.**

[Emphasis added]

15. Another award which reaches the same conclusion, with somewhat different and arguably more restrictive language than the parties' Collective Agreement (and *Olympic Motors, supra*) is *Davis Wire Industries Ltd. v. United Steelworkers Union, Local 2009 (New Statutory Holiday Grievance)* (Devine) (July 22, 2022).

16. At paras. 26 on, the Board states:

The applicable language pertaining to new holidays is concise. With respect to new holidays, the Parties agree to recognize "**any other day declared a Statutory Holiday by the Provincial and/or Federal Government**" (emphasis added). A literal reading of this language is that it applies on an either-or basis. To place the restriction urged by the Employer that the holiday must be recognized both by the provincial and federal governments, the language at a minimum would need to read only "and". **The use of "and/or" on a plain reading is applicable to holidays recognized by both levels of government together or either level of government alone. On a plain reading of this language, a statutory holiday declared by either the federal or provincial government would be applicable to the members of the Union covered under the Collective Agreement.**

I therefore find and declare that the federal holiday National Day for Truth and Reconciliation is a Plant Holiday under Article 6 of the Collective Agreement and as such is applicable to the

members of the bargaining unit in accordance with its terms. The bargaining unit employees are entitled to compensation in accordance with Article 6 from the effective date of the declaration of the holiday.

[Emphasis added]

17. In the case before me, the Employer correctly notes that it is provincially regulated and the NDTR is not designated as a statutory holiday under provincial legislation. Therefore, the Employer is not obliged to compensate its employees for NDTR based upon the Federal legislation alone.
18. Like *Olympic Motors, supra*, the only issue is whether its employees are entitled to the NDTR by operation of the Collective Agreement. On the basis of my consideration of the foregoing facts and law, the answer is “yes”.
19. Specifically, I find that Article 18.1(b) “Any other holiday proclaimed as a holiday by **the federal, provincial or municipal governments** for the locality in which an employee is working shall also be a paid holiday” incorporates holidays proclaimed by the Federal Government, regardless of whether the Employer is obligated by statute to recognize that holiday. This includes NDTR.

IV. CONCLUSION

20. The grievance is allowed. Pursuant to the remedies requested:
 - (a) I declare that the Employer violated the Collective Agreement by not recognizing National Day for Truth and Reconciliation;
 - (b) I order the Employer recognize National Day for Truth and Reconciliation as a paid holiday; and
 - (c) I order that the Employer make whole all employees employed by the Employer as of September 30th, 2021 for its failure to recognize National Day for Truth and Reconciliation as a holiday plus interest.
21. I retain jurisdiction regarding implementation of the foregoing remedies.

DATED on this 4th day of November, 2022 in the City of Victoria, British Columbia.



Marli Rusen, BA, LLB.
Arbitrator