CITATION: London Civic Employees Union Local 107 v. Corporation of the City of London et al, 2024 ONSC 6625
DIVISIONAL COURT FILE NO.: 51/23
DATE: 20241204

2024 ONSC 6625 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Mew, Myers, and O'Brien JJ

BETWEEN:	
LONDON CIVIC EMPLOYEES UNION LOCAL 107 Applicant	*M. Klug*, Counsel for the Applicant
– and –	
THE CORPORATION OF THE CITY OF LONDON AND IAN ANDERSON Respondents	*K. Dawtrey*, Counsel for the Respondent the Corporation the City of London
	HEARD in London: on November 26, 2024

O'BRIEN J.

REASONS FOR DECISION

Overview

[1] The issue on this application relates to whether the City of London's outdoor employees were entitled to a paid holiday on September 19, 2022. This was the day set aside to honour the memory of Queen Elizabeth II.

[2] The applicant union represents the city's outside workers. The parties' collective agreement contains an article listing paid statutory holidays and includes an additional clause for a holiday on "any other day declared by a competent authority to be a holiday within the meaning of the *Bills of Exchange Act* as amended from time to time."

[3] On September 13, 2022, the Governor in Council (GIC) issued a proclamation regarding a day to honour the Queen's memory on September 19, 2022. In the city's view, the proclamation

did not fall within the wording of the *Bills of Exchange Act*, R.S.C. 1985, c. B-4 (*BEA*). It therefore did not offer the union's members a paid holiday. The union filed a grievance.

[4] Arbitrator Ian Anderson, who was appointed by the parties to decide the grievance, agreed with the city. He reasoned that the language of the proclamation did not fall within the wording of the collective agreement because it "requested" Canadians to set the day aside to honour the Queen's memory, whereas the *BEA* required that the day be "appointed" to be observed as a day of mourning. In his view, the purpose of the relevant *BEA* provisions was to ensure certainty regarding whether a day is to be counted in the computation of time for the payment of bills of exchange. He acknowledged that another arbitrator reached a different conclusion on similar wording, but distinguished his decision from that award because the other arbitrator did not consider the difference between "request" and "appoint."

[5] The union submits Arbitrator Anderson erred in his interpretation of the collective agreement. It says he failed to apply the modern principle of interpretation by not considering the purpose of the proclamation, which was to encourage Canadians to set aside September 19, 2022 as a day to honour the memory of the Queen. In its submission, he also did not consider key words in the proclamation, which required Canadians to "govern themselves accordingly," nor did he sufficiently account for statements of the Prime Minister and other government officials to the effect that September 19, 2022 would *be* a national day of mourning. Finally, in the union's submission, the arbitrator failed to justify his departure from the other arbitral award reaching a different conclusion on similar collective agreement language.

[6] For the following reasons, I find the arbitrator's award to be reasonable. The application is dismissed.

Was the arbitrator's interpretation of the collective agreement unreasonable?

[7] There is no dispute the standard of review of the arbitrator's decision is reasonableness. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 instructs reviewing courts to consider the outcome of an administrative decision in light of its underlying rationale to ensure the decision as a whole is transparent, intelligible and justified. While reasonableness review is not a rubber-stamping process, the starting point is judicial restraint and respect for the role of the administrative decision-maker. It is particularly appropriate to show deference to a labour arbitrator's interpretation of the party's collective agreement, which is a matter that falls squarely within a labour arbitrator's expertise.

[8] In this case, the arbitrator's analysis was reasonable. The distinction drawn by the arbitrator between the wording of the *BEA* and the wording of the proclamation was transparent, intelligible, and justified.

[9] Article 12.1 of the parties' collective agreement incorporates the definition of holidays from the *BEA*. It provides in relevant part that "All employees… who are not required to work on the following holidays shall be paid…for each of the following holidays: New Year's Day; Good Friday; Easter Monday [etc.] … and any other day declared by a competent authority to be a

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holiday within the meaning of the *Bills of Exchange Act* as amended from time to time." (emphasis added)

[10] The *BEA* defines "legal holidays or non-juridical days" in relevant part by referring to those "appointed by proclamation." Paragraph 42(a)(iii) of the *BEA* provides:

> 42. In all matters relating to bills of exchange, the following and no other days shall be observed as legal holidays or non-juridical days:
>
> (a) in all the provinces,
>
> …
>
> (iii) any day appointed by proclamation to be observed as a public holiday, or as a day of general prayer or mourning or day of public rejoicing or thanksgiving, throughout Canada. (emphasis added)

[11] The September 13, 2022 proclamation at issue here does not expressly "appoint" a day to be observed as a day of general mourning. It reads in part:

> Now Know You that We, by and with the advice of Our Privy Council for Canada, do by this Our Proclamation request that the people of Canada set aside September 19, 2022 as the day on which they honour the memory of Her late Majesty Queen Elizabeth the Second, who passed away on September 8, 2022. (emphasis added)

[12] The arbitrator examined the French and English versions of the *BEA* and reasoned that for a day referenced in a proclamation to be a legal holiday for the purposes of the *BEA*, the GIC must fix or appoint the day. It was not sufficient, in his view, for the proclamation to request or, as he interpreted the French version, "call upon" the people of Canada to set aside a day of mourning. The wording of the proclamation allowed individuals to make their own decisions, which did not provide enough certainty for the computation of time related to payments of bills of exchange.

[13] I find this interpretation to be reasonable. The words used in the *BEA* and the proclamation are different. The city has provided examples of similar proclamations that "requested" the people of Canada set aside a day to mourn or honour a memory. These included a day to mourn the victims of September 11, 2001, a day to honour the memory of the Queen Mother, and a day to honour the memory of Prince Philip. Other proclamations dating back to the first half of the 20th century used different wording, such as to "appoint "a public holiday to be observed as a general day of mourning" in respect of the death of King George V in 1936. The GIC should be taken to be aware of the *BEA*. It could have "appointed" the day – and has done so in the past -- but chose to use the more flexible term "request" in this instance.

[14] The union submits that requesting Canadians to set aside a day is effectively the same as appointing the day. It also emphasizes the further wording of the proclamation, which says: "Of All Which Our Loving Subjects and all others whom these presents may concern are required to take notice and govern themselves accordingly." Although the arbitrator did not specifically

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discuss this wording, he is not required to address every aspect of a party's submissions, so long as he grapples with their central arguments. Here, the additional wording adds little to the analysis given that it only requires Canadians to govern themselves according to a proclamation that "requests" them to set aside the day. The arbitrator's interpretation may not be the only reasonable reading of the proclamation and the *BEA*, but, given their different wording, it is one reasonable interpretation.

Application of Interpretive Principles

[15] I also disagree with the submission that the arbitrator erred in his application of interpretive principles. He examined the statutory context, which included the purpose of the *BEA*. He found its purpose was to establish rules with respect to bills of exchange. He emphasized that ss. 41 and 42 of the *BEA* related to computations of time for when bills of exchange became due and payable. The arbitrator found that under the *BEA*, it was important to ensure certainty with respect to whether a day was to be counted. The focus on certainty makes sense given the consequences that may ensue from non-payment of a bill of exchange on the due date. This approach is consistent with the evidence before the arbitrator that banks remained open on September 19, 2022.

[16] It was not unreasonable for the arbitrator to find the purpose of the *BEA* to be the overriding concern. Although the proclamation encouraged Canadians to set aside a day of mourning, the GIC could have, but did not, use stronger language that would have ensured the day was set aside or that a public holiday was observed if this was its intention. In circumstances where the GIC only "requested" that the day be set aside, it was reasonable to interpret the language of the proclamation as insufficiently certain to fall within the requirements of the *BEA*.

Contemporaneous Statements

[17] The arbitrator also did not err in his approach to the contemporaneous statements by government officials. The arbitrator declined to rely on the statements first because the proclamation was made by the GIC and not by any individual government official. In that respect, he was entitled to focus on the actual wording of the proclamation rather than on various statements, each with their own wording, by different government representatives.

[18] In any event, the arbitrator found the statements did not assist the union. He stated they showed the federal government had decided to grant a holiday to federal government employees and invited other federally regulated employers to follow suit. This finding was open to him in the context of the evidence. For example, a statement on the Prime Minister's website said that September 19, 2022 would be a National Day of Mourning but also that it would be "designated a holiday for the public service of Canada and other employees across the country [were] also invited to recognize the National Day of Mourning."

[19] A statement from the Minister of Labour similarly read: "September 19, 2022 will be a holiday for federal government employees. It will be a day of mourning for the passing of Her Majesty Elizabeth II, Queen of Canada. Federally regulated employers are welcomed to follow suit, but they are not required to do so." Where the public statements described a day of mourning

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but also stated it would only be designated a holiday for federal government employees, it was open to the arbitrator to conclude they did not assist the union.

Departure from Other Arbitral Award

[20] Finally, the union submits the arbitrator failed to justify his departure from a decision by a different arbitrator interpreting similar wording in a different collective agreement. I disagree. The union relied on a decision by arbitrator Michael Bendel interpreting the collective agreement for the city's inside workers. Arbitrator Bendel concluded that under that collective agreement, the proclamation fell within the wording of s. 42(a)(iii) of the *BEA*. This court upheld that conclusion as reasonable on judicial review but remitted the matter to the arbitrator for failure to consider evidence put before him regarding historical collective agreements and proclamations: *London (City) v. Canadian Union of Public Employees, Local 101*, 2024 ONSC 4074.

[21] The critical difference in that case is that the parties did not raise the key argument about the difference between "request" and "appoint." *Vavilov* reminds us that arbitrators and other administrative decision-makers are not bound by internal precedent in the same manner as courts. Some conflicts between administrative decisions are the "price to pay" for independence of decision-making:

> As this Court noted in *Domtar*, "a lack of unanimity is the price to pay for the decision-making freedom and independence" given to administrative decision-makers, and the mere fact that some conflict exists among an administrative body's decisions does not threaten the rule of law; p. 800 [of *Domtar Inc. v. Quebec (commission d'appel en matière de lésions professoinnelles)*, [1993] 2 S.C.R. 756].

[22] Reviewing courts should still be concerned with the general consistency of administrative decisions. If an arbitrator departs from longstanding practice or established internal decisions, the departure must be justified: *Vavilov*, at para. 131 In this case, there was only one other recent decision, not an established precedent. In any event, Arbitrator Anderson explained his departure from Arbitrator Bendel's decision. Arbitrator Bendel found the proclamation fell within s. 42(a)(iii) in the sense that it referenced a "day of mourning" as required by the *BEA*. This was in response to the city's argument that the proclamation referenced a day to "honour the memory" of the Queen and not a "day of mourning" as set out in the *BEA*. The argument that the GIC "requested" the day be set aside rather than "appointing" a day of mourning was not put to him.

[23] Arbitrator Anderson implicitly accepted Arbitrator Bendel's conclusion that a "day to honour the memory" was the same as a "day of mourning." He did not raise any disagreement with this point but reached his decision on an entirely different basis. Similarly, this court only found Arbitrator Bendel's interpretation of s. 42(a)(iii) to be reasonable on the "day of mourning" issue. In any event, it has remitted the matter to the arbitrator.

[24] The departure from Arbitrator Bendel's decision was clearly explained. Arbitrator Anderson reached his decision on an argument not put to Arbitrator Bendel. The nature of reasonableness review is that, in most cases, there can be more than one reasonable outcome. Arbitrator Anderson's conclusion was within a range of possible, acceptable outcomes that was

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justified in respect of the facts and the law: *Vavilov* at para. 86. I do not find this case to be of the type referenced in para. 124 of *Vavilov* where there is only one reasonable interpretation of the collective agreement. As a result, it is not appropriate for the court to intervene.

Disposition

[25] The application is dismissed. In accordance with the parties' agreement, the union shall pay costs of $5,000 all-inclusive to the city.

_____
O'Brien, J

I agree _____
Mew, J.

I agree _____
Myers, J

Released: December 4, 2024

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