



*Yukon Education  
Labour Relations Act*

Before an adjudicator

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BETWEEN

**YUKON TEACHERS' ASSOCIATION**

Bargaining agent

and

**GOVERNMENT OF THE YUKON**

Employer

**Before:** Leslie Reaume, adjudicator

**For the Bargaining agent:** James R. Tucker and Luke S. Fought, counsel

**For the Employer:** Kim Sova, counsel

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Heard by videoconference,  
March 22, 2021, and April 9, 2021.  
(Written submissions May 6, 2021, and May 7, 2021).

## I. Background

[1] The parties to this adjudication are the Yukon Teachers' Association, the certified bargaining agent for the bargaining unit ("the union") and the Government of the Yukon ("the employer"). The union filed this policy grievance on September 19, 2019, alleging that the employer breached the collective agreement, in effect from July 1, 2018, to June 30, 2021 ("the CA"), when permanent full-time employees ("employees") were transitioned to a continuous biweekly pay system in 2019. The grievance relates only to permanent full-time employees.

[2] Under the previous CA, in effect from July 1, 2015, to June 30, 2018, employees were paid their annual salaries in full biweekly increments until the end of the school year. In June, a reconciliation took place, and the employees received the balance of their annual salaries in a lump-sum payment and a final biweekly payment. At the end of August or the beginning of September, they would begin receiving full biweekly pay increments, followed by another reconciliation in June. Although the employees were continuously employed throughout the year, the pay system operated like a contract-based system that was roughly aligned with the school year.

[3] The parties negotiated the new CA and agreed to transition employees to a pay system under which they would receive their salaries and applicable allowances in continuous biweekly increments throughout the year. The CA required that employees be paid biweekly for services rendered, in accordance with the appropriate pay grid, at a rate of  $1/26.088$  of their annual salaries and  $1/26$  of their applicable allowances. The parties signed a "Memorandum of Settlement" dated December 6, 2018, agreeing that the changes to the biweekly rate of pay and biweekly pay periods would become effective "at the start of the 2019/2020 school year". Start dates varied depending on the school.

[4] The policy grievance is about the first pay received by employees under the new system. The employer transitioned employees to the new pay system by calculating the number of days their respective schools were open in the first biweekly pay cycle. If an employee's school was open for six days in the first pay cycle, the employee was paid for six days rather than  $1/26.088$  of his/her/their annual salary. Following the first pay, each employee was paid a full biweekly pay in accordance with the CA.

[5] The union's position is that although the employer has sole control and authority over the administration of their pay system, there is no authority in the CA

for the decision to calculate the first pay based solely on the days that schools were open instead of the biweekly rate of pay as defined by the CA. As a result, employees were short on their first paycheques and did not receive their full annual salaries (and related allowances) as required under the CA.

[6] The employer's position is that the parties agreed that the changes to the pay system would take effect at the start of the 2019-2020 school year. Employees were paid in the first biweekly pay cycle for the days their schools were open because this was consistent with the employer's practice of payment in arrears or payment for services rendered. Under the previous collective agreement, employees received a full biweekly pay in August or September regardless of the opening dates of their schools. However, their salaries were reconciled in June, which ensured that they were compensated appropriately.

[7] The policy grievance was referred to the Yukon Teachers Labour Relations Board for adjudication pursuant to s. 68 of the *Yukon Education Labour Relations Act*, RSY 2002, c.62, on January 28, 2020. The parties agreed to have the policy grievance determined first. The individual grievances filed in relation to this matter for lost pay and allowances have been held in abeyance.

## **II. Decision**

[8] The method by which the employees were transitioned to the new pay system resulted in a breach of the CA. The policy grievance is allowed for the reasons that follow.

## **III. Agreed statement of facts**

[9] The parties filed a joint book of documents and the following agreed statement of facts:

...

*1) The employer has sole control and authority over the administration of their pay system.*

*2) Under the previous [CA], in effect from 2015 to 2018, pay for permanent employees was reconciled and paid out annually near the end of the school year. Typically, employees received a lump sum payment in June that included all remaining pay due to the employee for that school year.*

*3) Employees were paid based upon 980 hours of work in the school year, distributed as equal bi-weekly installments of 1/26th of their salary and allowances over a calendar year.*

4) All permanent employees were fully paid for the 2018/2019 school year within one calendar year from the first pay received in the 2018/2019 school year, in accordance with the 2015 to 2018 [CA]. Permanent employees were paid their earnings over 22 pays in the school year, with the remaining four bi-weekly instalments (up to the start of the next calendar year) paid in a lump sum on the second to last pay of the school year. Employees all received a full 1/26th of their annual salary on their first pay, regardless of the varied opening dates of their respective schools.

5) Following a period of negotiations leading to the 2018-21 [CA], the employer provided a letter of assurance dated September 21, 2018, confirming that "the agreed move to a biweekly pay system is not intended to adversely affect the payment of other allowances or the calculation of the rate of pay provided for in the leave provisions of the [CA]."

6) As in previous years, the 2019/2020 school year had start dates that varied based on the school. In 2019/2020, those dates ranged from August 20, 2019, to September 3, 2019. (start date calendars)

7) The first regular biweekly pay of the 2019/2020 school year was on either August 28, 2019, for most Yukon schools, or September 11, 2019, for Kluane Lake School and both schools in Watson Lake. Paydays were every other Wednesday, as was the case under the previous [CA]. (pay calendars)

8) The last biweekly payday in the 2019/2020 school year was on either August 12, 2020, in most Yukon schools or August 26, 2020, in Kluane Lake School and both schools in Watson Lake.

9) Employees with irregular earnings for 2019-20 due to changes in location, employment status, or unpaid leave had their pay reconciled in June 2020, with their remaining pay owed distributed equally over the four pay periods of the summer break.

10) The 2020/2021 school year had different start dates between August 18, 2020, and September 1, 2020.

11) The first biweekly payday in the 2020/2021 school year was on either August 26, 2020, in most Yukon Schools, or September 9, 2020, in Kluane Lake School, both schools in Watson Lake and St. Elias Community School in Haines Junction.

...

[Sic throughout]

#### IV. Relevant legislative provisions

[10] The *Education Act*, RSY 2002, c 61 ("the Act"), as amended, establishes how decisions are made about when schools will operate and what constitutes a school year. The 980 hours referenced in the agreed statement of facts is set out at s. 46(2). Section 46 reads as follows:

46 ...

(1) *The Minister or, if a School Board has been established, the School Board shall specify, on or before March 31, for each school operated by it*

*(a) the school opening date;*

*(b) the number and the days of school operation,*

*(c) the length of the school day; and*

*(d) the number of minutes of classroom instruction in a school day.*

(2) *In each school year there shall be*

*(a) 950 hours of instruction;*

*(b) 15 hours for professional development for school staff who are employees within the meaning of the Education Labour Relations Act; and*

*(c) 15 hours for non-instructional purposes specified by a School Board or Council for its school or schools.*

...

(5) *Every school year shall include a winter vacation period that extends from at least December 21 to January 2 and one other vacation period of at least four weeks duration.*

...

## V. Relevant CA Provisions

[11] The CA in force from July 1, 2018, to June 30, 2021, contained the following relevant provisions, beginning with the key articles that addressed how and when employees were to be paid:

...

2.01 d) *“Biweekly rate of pay” means a permanent employee’s annual salary divided by 26.088 and any applicable allowances divided by 26.00.*

...

2.01 f) *“Continuous Service and Continuous Employment” means uninterrupted employment with the Government of the Yukon Territory ....*

2.01 g) *“Daily rate of pay” means an employee’s daily rate calculated on the basis of five (5) divided by 980 hours times the employee’s basic salary plus administrative or supervisory allowances ....*

...

14.01 a) *Employees, with the exception of Teachers on Call, shall be paid a salary for services rendered in accordance with*

*the appropriate [pay grid] calculated on a biweekly rate of pay basis.*

**14.03 Official Rate of Pay**

*An employee's, with the exception of Teachers on Call, official rate of pay shall be the annual rate calculated biweekly rounded off to the nearest cent.*

...

[Emphasis in the original]

[12] There is no dispute that employees were paid biweekly on alternate Wednesdays in accordance with Article 14.04. There are also specific pay provisions in the CA related to temporary employees that were not the subject of the policy grievance. The applicable pay grids were attached as appendices to the CA. Pay grids are effective July 1 of each year.

**VI. Additional evidence**

[13] Two witnesses filed affidavits and attended the hearing, one for the employer and one for the union.

[14] Peter Steringa, Employment Relations Advisor for the union, filed an affidavit attaching several pay records in respect of sixteen individual grievors. He also provided a description of the losses they allegedly experienced under the new pay system to support the policy grievance.

[15] Debbi Huff, Manager Compensation Administration for the Public Service Commission of the Government of Yukon, filed an affidavit describing the previous pay system and how employees were transitioned to the new pay system.

[16] Ms. Huff's description of the administration of the previous pay system was consistent with the agreed facts. Employees received full bi-weekly pay increments followed by a reconciliation, lump sum and final bi-weekly payment. By the time the pay reconciliation took place at the end of the school year each June, the employees had completed their 980 hours. By the time of the final bi-weekly pay, the employees had received their full annual pay.

[17] Ms. Huff testified about how employees "earned" their pay under the previous and new pay systems. She described how the employer calculated a daily rate of pay based on an employee's annual rate of pay and teaching days. She also described the principle of payment in arrears or payment for services rendered, which means that

employees are paid after they have earned their pay. Ms. Huff testified that by applying these principles, it was difficult to compare what employees earned with what they were paid under the two different systems.

[18] Ms. Huff testified that the 2019-2020 school year was the first under the new CA and a transition year for the employees who had been fully paid out for the previous school year. The employer determined that with the removal of the reconciliation language and the practice of paying employees in arrears for work they performed, the first working day of the 2019-2020 school year would be deemed the start of their earnings under the new pay system. For example, grievor 20-009 was paid for nine days in the first pay cycle because she worked those days. After that, she received her full biweekly pay regardless of whether her school was open. Ms. Huff testified that from an operational perspective, the commencement of the 2019/2020 school year was the only appropriate time to make the transition from the previous pay system to the new one.

[19] Ms. Huff was asked why the employees were not all transitioned at the beginning of a pay period. She responded that they were treated like any employee would be when a change in their pay occurred and they were onboarded to the new system as if they were new employees. Ms. Huff also testified that the general intention behind the new system was to pay the employees their annual salaries within a year.

[20] The parties also referred to several documents in the joint book of documents.

[21] In a "Memorandum of Settlement" dated December 6, 2018, the parties agreed that the changes to Article 2.01(d) (about the biweekly rate of pay) and Article 14 (about biweekly pay periods) would become effective at the start of the 2019-2020 school year.

[22] On July 30, 2019, the employer emailed the employees, advising them of the transition to "... a continuous pay structure of 26 pay periods." The email indicates that employees will be paid for "actual days," meaning the days their schools are open, in the bi-weekly pay period on the first pay based on when they started work.

[23] On August 28, 2019, the union requested an explanation as to why the first pay would be reduced from a full bi-weekly payment. The union raised the concern that employees would not receive their full annual salaries over 26 pay periods if the first pay was tied to the days that schools were open.

[24] On September 19, 2019, the employer emailed the union, confirming that the employees were transitioning to a biweekly system of 26 pays per calendar year, eliminating the need for a contract payout. The email indicates that the employees were previously paid one full biweekly pay at the start of the school year, regardless of the days they worked. In June, when the contract payout occurred, the days they did not work in the first pay cycle were subtracted from the pay owed for the remaining pay periods. The employer stated as follows:

...

*This year, indeterminate teachers were paid in the first pay **only for days worked** because unless they take LWOP or change schools/hours or have other employment status changes, they will be no need for reconciliation, and 25 pays after the initial August 28, 2019 pay an indeterminate teacher will have received 100% of their salary.*

*That is, before we paid three extra days (or whatever the case depending on school calendars) at the beginning of the school year, but reconciled or subtracted the three days in June at 'contract payout' to avoid an 'overpayment' and now there is no need for a reconciliation to do with the first pay period. So indeterminate employees are not 'missing' three days, but rather than accounting for them in June, they were accounted for when they occurred at the beginning of the school year, and hereafter it will just be regular pay periods (absent any leaves or other employment changes).*

...

[Emphasis added and *Sic* throughout]

[25] The union filed the policy grievance on September 19, 2019. Several pieces of correspondence came out of meetings that took place about the issues that the union raised. On August 13, 2020, Ms. Huff sent an email stating, "... YTA pay administration is becoming an even larger burden and I have concern that the employer will be overcompensating and undercompensating employees, based on the way teachers 'earn' their money and are paid". She strongly suggested moving back to 26 pays and a reconciliation for all employees with 4 equal payments over the summer or the contract payout. Alternatively, she suggested that the employer redefine how the employees "earn" their salaries.

[26] The joint book of documents also includes the applicable school calendars and reports for two grievors ("COP" reports) setting out the pay that they received for 26 pay periods beginning on August 28, 2019, and September 11, 2019.



## VII. Analysis

[27] The central issue raised by the policy grievance is whether the employer's method of determining the first pay under the new continuous biweekly pay system breached the CA.

[28] The proper interpretation of the CA requires that the words chosen by the parties be read in their grammatical and ordinary sense, harmoniously with the scheme of the CA and its object, as well as the parties' intention when they agreed to the new pay provisions. (see *Imperial Oil Strathcona Refinery and C.E.P., Loc. 777 (Re)*, 2004 CanLII 94735 (AB GAA, page 252). It is presumed that all the words in the CA were intended to have meaning (see Brown and Beatty, *Canadian Labour Arbitration*, 5th Edition, at 4:2100; and *Willis & Winkler on Leading Labour Cases*, 2016, at 1:1).

[29] The employees affected by the transition to the new pay system were the permanent full-time employees who were in continuous or uninterrupted service pursuant to Article 2.01(f) of the CA.

[30] The employer's position is based primarily on how it defines earnings. The employer submits that in the transition to the new pay system, the employees were fully paid out for the previous school year and did not "earn" any new pay until the first working day of the 2019/2020 school year. The employer submits that employees earn their pay based on instructional hours during each school year which is then divided up and paid throughout the year on a biweekly basis. While employees earn all of their pay during periods of instruction, some of that pay is held in reserve and subsequently used to provide pay when there are no instructional hours. The employer submits that for the purpose of pay under the previous system, permanent employees were treated as new employees who were onboarded each school year. They started with a zero balance on the first working day of each school year and their pay was reconciled each June. The employer submits that under the new system employees started with the same zero balance. However, instead of starting with a fully biweekly pay and reconciling their pay in June, employees were paid for what they earned in the first pay cycle. The employer submits that while the parties agreed to change the way that employees are paid, the way they earn their pay did not change.

[31] The union submits that this is inconsistent with the CA and the fact that the employees were continuously employed, including the period between the end of the 2018-2019 school year and the beginning of the 2019-2020 school year. The union

submits that the employer breached the CA by onboarding employees to the new pay system as if they were new employees, and reducing their first pay from a full-biweekly payment.

[32] The CA does not indicate when the biweekly payments were to begin. In the “Memorandum of Settlement” dated December 6, 2018, the parties agreed that the changes to the biweekly rate of pay and biweekly pay periods would become effective at the start of the 2019-2020 school year. The employer relied on this agreement to transition employees to the new system. However, the union submits that the agreement does not authorize the employer to pay employees anything less than a full biweekly payment on their first pay at the start of the school year.

[33] The CA clearly states that each employee would be paid a salary for services rendered in accordance with the appropriate pay grid and calculated on a biweekly rate-of-pay basis. The biweekly rate of pay is defined as a employee’s annual salary divided by 26.088 and any applicable allowances divided by 26.00. I agree with the union that the employer was not authorized under the CA to pay a salary for services rendered to any employee in increments of less than 1/26.088; nor does the CA link a employee’s pay to school or instructional days.

[34] The employer is correct that the words “services rendered” in the CA must be given meaning. However, the employer made a unilateral decision that employees were not rendering services or earning their annual salaries until they reported to work in the first pay cycle. As a result, the employees were deemed to have “earned” a portion of their annual salaries in the first pay cycle that was equivalent to the number of days their schools were open. The employer acknowledged that this methodology applied only to the first pay and only for the purpose of transitioning the employees to the new system. However, it was inconsistent with the continuous employment status of the permanent employees and the explicit requirement to pay them 1/26.088 of their annual salaries in each biweekly pay. The employer was required to give the term “services rendered” a meaning that was harmonious with the CA’s other pay-related provisions.

[35] I do not accept the employer’s position that it was consistent with the CA to transition employees to the new pay system in the same way as the other transitions described in its submissions, that would result in a change in an employee's pay. This is not a situation where, as the employer submits, the employees were paid their old rate up to the point of transition and the new rate after the transition. Even if I accept

this argument, the new rate after the transition is the biweekly rate of pay set out in Article 2.01 d): a permanent employee's annual salary divided by 26.088 and any applicable allowances divided by 26.00.

[36] I do not accept the employer's position that employees did not earn and therefore were not owed any new pay until the first working day of the 2019/2020 school year. While the parties agree that the school year commenced on the day that each school opened, this should have no impact on the pay for employees who are in continuous employment. The employer's argument that an overpayment would result from paying employees a full biweekly increment in the first pay cycle is based on the faulty premise that employees had not earned or were not entitled to  $1/26.088$  of their annual salaries as expressly provided for in the CA. I agree with the union that the start date of the school year or any other date chosen by the employer to begin paying employees, is not the issue: once Articles 2.01(d) and 14 came into effect, the employer was obligated to pay employees a full biweekly pay. The employees were not new hires, nor did the transition to the new pay system constitute a change in their employment status or pay. The change was in how they were paid their annual salaries, not the amount they were entitled to receive under the CA.

[37] At the same time, the CA does not explicitly require that employees receive their full annual salaries within 26 pays or one year. It requires the employer to pay them biweekly in increments of  $1/26.088$ .

[38] The best illustration of the consequences of the employer's decision is set out in the COP reports in the joint book of documents. I have relied on these documents because they were generated by the employer's Peoplesoft system and submitted jointly by the parties. The report for grievor 20-009 demonstrates that her pay was \$449.99 short of her biweekly rate of pay (\$4,499.89) on the first pay, September 11, 2019. She then received 25 full biweekly pays after that date. Between her annual salary (\$117,393.57) and what she was paid (\$116,547.15) after 26 pay periods, there is a difference of \$846.42. Part of that difference is attributable to the agreement that the parties made to pay employees in  $1/26.088$  increments. Once the pay differential between increments of  $1/26$  and  $1/26.088$  (\$396.43) is accounted for, there is still a shortfall of \$449.99 from the grievor's first pay. The grievor should have received \$116,997.14 after 26 pay periods at her biweekly rate of pay.

[39] This is consistent with Mr. Steringa's analysis for the same grievor for the 2019/2020 school year. I note that Mr. Steringa's calculation does not account for the

pay differential between 1/26 and 1/26.088 increments which would result in payments totalling \$116,997.14 after 26 pays, consistent with the CA. The difference is \$449.99, exactly what the grievor was shorted on her first pay.

[40] The shortfall is further confirmed by considering the spreadsheets prepared by Ms. Huff for the same grievor from the employer's electronic database and paper-based payroll files. The third spreadsheet (B) is an illustration of how the contract-based system worked prior to the new pay system. There was no dispute between the parties about those figures. The first spreadsheet (A-1) uses the daily rate of pay and teaching/instructional days to calculate the approximate amount of pay "earned" during the 2019 calendar year compared to the actual amount paid out to the same grievor. The second spreadsheet (A-2) uses the number of pay periods to calculate an approximate amount of pay "earned" during the calendar year and the amount paid out during that year. Both reports demonstrate a shortfall of \$449.99 on the grievor's September 11, 2019, pay, and there was no evidence that this shortfall was ever made up. The gap in earnings and pay is based on the employer's premise that employees were not entitled to a full biweekly pay on the first pay cycle under the CA because they had not earned a full biweekly pay. As I indicated previously, that premise is not consistent with the continuous employment status of the employees and the employer's obligations under the CA.

### **VIII. Conclusions**

[41] The union requested that I find the employer in breach of Articles 14.01(1) and 14.03 of the CA, and section 167 of the *Education Act*, the obligation to pay permanent employees their full annual salary on a biweekly rate of pay basis and an implied term of the CA that remuneration would be paid in a reasonable time.

[42] The employer had sole control and authority over the administration of its pay system and the decision to onboard existing employees. However, the employer was required to exercise that authority in a manner consistent with the CA.

[43] It is clear from the evidence and the relevant CA provisions that the parties intended to transfer the employees to a continuous biweekly system by paying their annual salaries in increments of 1/26.088. The employer's failure to pay the employees the full 1/26.088 of their annual salaries at the first pay cycle constituted a breach of Articles 14.01(1) and 14.03 of the CA, which require the employer to pay employees their full annual salaries on a biweekly rate-of-pay basis as defined in Article 2.01(d).

Implicit in this finding is that the employer breached its obligation to pay permanent employees their full annual salary on a biweekly rate of pay basis. It is not necessary to make a separate finding in this respect.

[44] The union has successfully proven that the employer's method of onboarding employees onto the new pay system resulted in a shortage in their first pay under the new CA, including any allowances that were reduced based on the same premise. It is also clear from the evidence that the breach of the CA resulted in employees being treated unfairly and they experienced differential treatment depending on the school where they worked. Employees received more or less of their biweekly pay in the first pay period depending on the start date of their school.

[45] The union requested an order confirming that the employer breached s. 167 of the *Act*, which reads, "Every teacher has the right to be treated in a fair and reasonable manner free from physical and other abuse." My role is to determine whether the CA was breached, not the *Act*. In any event, I have already found that the breach of the CA resulted in unfair treatment.

[46] It is also not necessary to consider whether the employer has breached an implied term of the CA that remuneration would be paid in a reasonable time. The CA specifically provides for the timing of payments to be made to employees, which the employer has been found to have breached in this case.

[47] The union did not seek a remedy other than a declaration that the CA was breached. The parties agreed that they would work together to resolve the shortages in pay and allowances based on the outcome of this policy grievance.

*(Order appears on next page)*

**IX. Order**

[48] The Policy Grievance is upheld. The employer has violated the following provisions of the CA:

- a. Articles 14.01(a) and 14.03 of the 2018-2021 CA.

December 28, 2022.

**Leslie Reaume,  
adjudicator**