Saskatchewan Court of Appeal: no obligation to provide full-time benefits to accommodated employee working part-time hours

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While human rights legislation requires that employers make considerable efforts to accommodate disabled employees, it does not require that they provide pay and benefits to accommodated employees that amount to more than the value of the work being performed. This was stated by the Ontario Court of Appeal in *Ontario Nurses' Association v. Orillia Soldiers Memorial Hospital* (see "A question of comparison: Appeal Court rules on restrictions to benefits, seniority and service accumulation of disabled employees" on our Publications page) and has since been reiterated by the Saskatchewan Court of Appeal in *Retail, Wholesale and Department Store Union, Local 454 v. Canada Safeway Limited* (February 24, 2005).

The case involved a grievor who was unable to work more than 32 hours a week. This resulted in her being downgraded to part-time status once it became clear that her disability was permanent. This downgrading affected a number of her entitlements under the collective agreement, which contained different regimes for rest periods, holiday pay, scheduling and sick leave accumulation based on whether an employee worked full-time or part-time. The agreement did not expressly define "full-time", but a number of other provisions made it clear that a full-time employee was one who worked 37 hours.

ARBITRATOR: FULL-TIME STATUS A "GUARANTEE"

The union grieved the downgrading of the grievor's status and was successful before the board of arbitration. The board reasoned that, under the agreement, a full-time employee was not one who necessarily worked 37 hours a week but, rather, an employee to whom the employer guaranteed that 37 hours of work would be made available. Accordingly, the board held, the employer's accommodation, which guaranteed only 32 hours of work, was deficient.

COURT: FULL-TIME STATUS AN OBLIGATION TO WORK 37 HOURS

The Saskatchewan Court of Queen's Bench quashed the arbitration award, holding that the board's interpretation of "full-time" employment was patently unreasonable and that its conclusion about the nature of the duty to accommodate was incorrect. In its ruling, the Court agreed with the employer's position that full-time status was not simply conferred by the employer but, rather, was part of a bargain in return for which employees were required to work a minimum of 37 hours a week:

> "The Board reached the conclusion that benefits made available to full-time employees were somehow unrelated or not dependent upon hours worked, but rather simply dependent upon an employee's classification as full-time versus part-time. This conclusion is unrealistic and unfounded. Safeway argues that "hours worked" is the consideration which underpins the distinction between full-time and part-time employees. That is so because "full-time" status is a proxy for hours worked, i.e. full-time employees, on an ongoing basis, log 37 hours per week and more hours than part-time employees. Accordingly, when certain benefits are made available to full-time employees only, they are necessarily made available as a function of the longer hours worked by those employees. I agree with Safeway's argument in this regard. The classification full-time necessarily includes an obligation to work 37 hours per week on a regular basis."

The Court went on to state that the board had erred in improperly combining the issue of the employer's obligation to facilitate the participation in the workplace of disabled employees and the question of how employees should be compensated for work performed. In relation to compensation, the Court held that the differential treatment of employees on the basis of the amount of work performed was not a breach of human rights obligations.

COURT OF APPEAL DISMISSES APPEAL

The union's appeal to the Court of Appeal was dismissed. The Court agreed that the arbitration board's conclusion about the nature of full-time employment under the collective agreement was "wholly unreasonable" and that compensating employees based on the amount of work performed does not constitute discrimination.

The union was denied leave to appeal to the Supreme Court of Canada on August 18, 2005.

In Our View

This decision is consistent with the general approach taken by arbitrators that provisions that link various forms of compensation – such as vacation entitlement and employer benefit contributions – to ability to perform work are permissible under human rights legislation (see "The accommodation of disabled employees - a guide to the legal landscape", "The duty to accommodate in action"; and "Accommodating disability short of undue hardship" on our Publications page).

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