

BETWEEN:

CARLETON UNIVERSITY

(‘THE EMPLOYER’)

- and -

**CARLETON UNIVERSITY ACADEMIC
STAFF ASSOCIATION**

(“CUASA”)

AND IN THE MATTER OF GRIEVANCES
FILED ON BEHALF OF SAM BOTTOMLEY

SOLE ARBITRATOR

O.B. SHIME, Q.C.

APPEARANCES:

JAMES K. MCDONALD

Counsel and others
for the Association

STEPHEN BIRD

Counsel and others
for the Corporation

A hearing was held at Ottawa in this matter on
November 6, 2009

SUPPLEMENTARY AWARD

An earlier award concerning the Grievor's sick leave benefits was issued on March 16, 2010.

The Association had also argued that the Grievor was entitled to accrue pension service after June 30, 2008. Article 20.5(a) of the Collective Agreement, provides that legitimately ill employees shall be entitled to receive full salary and "other benefits" for a period of one hundred and eight (180) calendar days or until benefits under the Group Long Term Disability Plan come into effect, whichever may be the shorter of the two. Accordingly, it is necessary to determine whether the accrual of pension service is an "other benefit" to which the Grievor is entitled.

The Association referred to the CLASA Benefits Booklet in support of its submissions. However, that booklet contains a "Disclaimer", that the booklet is subject to the actual plan documents, the Collective Agreement, and University Policy "which will prevail in the event of a discrepancy". Accordingly, I now turn to the relevant provisions of the Retirement Plan which is the prevailing document for the purposes of the arguments advanced.

The Carleton University Retirement Plan provides as follows:

Preface

"Unless stated otherwise, the terms of the Plan as restated shall apply to Members who retire, terminate employment

or die on and after July 1, 2003 and the benefits of Members who retired, terminated employment or died prior to this date shall be determined by the terms of the Plan in effect at the time of that event.”

Section 1 – Definitions

1.14 “*Employee*” shall mean:

- a) a regular full-time continuing employee of the University;
- d) a full-time or part-time employee with a term appointment of 12 months or more;

1.21 “*Member*” shall mean an Employee who has become entitled to participate in accordance with the provisions of the Plan, and remains entitled to benefits hereunder.

Article 4.01 of the Plan provides for “Required Contributions by the Member”, while Article 4.05 provides for “Contributions by the University” “on behalf of each Member”. It is important to note that Article 4.05 also provides for contributions “in the case of a Member who, by reason of Total Disability, is in receipt of long-term income contribution benefits under a plan contributed to or sponsored by the University...”

Article 40.8 of the Collective Agreement is sufficient in scope to incorporate the Retirement Plan into the Collective Agreement and, accordingly, Article 20.5 must be read in conjunction with or reconciled with the provisions of the Retirement Plan.

When the Grievor first became ill and accessed the sick leave provisions he was an employee whose entitlement to sick leave crystallized at that time, and, as a result, and for the reasons stated, became vested, and therefore the Grievor’s sick leave entitlement

was extended for the full one hundred and eighty calendar days and beyond his termination date. Under the Collective Agreement, however, as in those cases where employees have retired, but are entitled to pensions or other vested benefits, a vested entitlement does not alter the person's status. Thus retired, non employees may be entitled to vested rights. In the present case, the Grievor's employment was not extended beyond June 30, 2008 as the result of the vested sick leave benefit. The Grievor's status as an employee ended on June 30, 2008, in accordance with the University's letter of November 16, 2007, and accordingly, the Grievor was not an employee within the meaning of the definition of employee under the Retirement Plan. Since the Grievor was no longer an employee, he also does not fall within the definition of a "member" within the meaning of the Retirement Plan who is entitled to participate in the Plan or entitled to benefits under the Plan.

Further, a vested right is a right that is not contingent. While the sick leave benefit had crystallized prior to the Grievor's termination date and was settled or fixed, the accrual of service in the pension plan is contingent on the Grievor being an employee. After reading Article 20.5 in conjunction with the Retirement Plan, I determine that the Grievor's employment had ceased and the accrual of service in the pension plan was not a vested entitlement because it was contingent on his employment continuing and his being a "member" under the Plan. Therefore, it was not an "other benefit" to which the Grievor was entitled within the meaning of Article 20.5 of the Collective Agreement.

Further, Article 4.05 requires contributions in the case of a “Member” who by reason of Total Disability is in receipt of long-term income contribution benefits. Since the Grievor is no longer a Member, he is not entitled to accrue service under the Plan. In my view, Article 4.05 is limited to persons who are in receipt of Total Disability benefits, but who retain their status as employees.

In the result, the Grievor’s claim to accrue pension service is denied.

DATED at Toronto, this 29th day of June, 2010.

Owen B. Shime, Q.C.