

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
EXPEDITED ARBITRATION DECISION

In the Matter of Arbitration between

CITY OF QUINCY
and
MASSACHUSETTS LABORERS
DISTRICT COUNCIL

ARB 21-8857

Date Issued: May 13, 2022

Issue: Did the City violate Article 28 of the Agreement when it denied the grievant's request for compensation for her appearance as a witness in Quincy District Court? If so, what shall be the remedy?

Background: The grievant, Kristina Galligan (Galligan), works for the City of Quincy (City / Employer) and is a member of the bargaining unit. On or about June 25, 2021, Galligan was summonsed to Quincy District Court as a witness in a criminal matter. The City informed Galligan that she would be required to take a vacation day under the language of Article 28 of the collective bargaining agreement. Article 28 states:

Any employee required to appear in a Court of the Commonwealth, or before an administrative board as (sic) arising out of his employment does not lose any compensation as a result of his appearance.

On August 12, 2021, the Union filed a grievance over the City's requirement that Galligan use a vacation day to be paid for her day in court as a witness. The grievance was denied at all steps of the grievance procedure, resulting in the instant expedited arbitration.

Arguments:

The Union argues that the term "arising out of his employment" in Article 28 is ambiguous. The employee was summonsed to court as a witness for the Commonwealth in a criminal matter. She had no control over the process and informed the City prior to the date in question of her required attendance. Making the grievant use a vacation day is penalizing her.

The Union also argues that the City violated M.G.L c. 268 §14B (§14B). §14B states:

Any person who ... is subpoenaed to attend a criminal action as a witness and who notifies his employer of such subpoena prior to the day of his attendance, shall not be subject to discharge or penalty by said employer on account of his absence from employment by reason of such witness service. An employer shall not subject an employee to discharge or penalty or the threat of discharge or penalty on account of the absence of such employee from employment by reason of his attendance as a witness at a criminal action.

The Union argues that this statute protects the grievant from having to use a vacation day for her absence as it is a penalty prohibited by the statute.

The Employer argues that the summons was issued for a criminal matter that occurred off duty and did not arise in any manner from the grievant's employment as required under Article 28. There is no work nexus that Article 28 requires for an employee to be paid by the City for a court appearance. The parties negotiated this language and could have negotiated broader language to cover this situation but did not. Allowing this grievance would broaden the language that the parties agreed to.

The Employer also argues that the issue of any potential violation of §14B is not before the Arbitrator. The stipulated issue, agreed to by the parties and presented to the Arbitrator, asks only if the City violated Article 28, not whether §14B is applicable and/or violated.

Analysis:

An arbitrator's authority is derived from the parties collective bargaining agreement. In this case, the parties reached an agreement on a stipulated issue prior to the beginning of the expedited Arbitration hearing. As such, the only issue before me is whether the City violated Article 28 of Agreement. Since the parties failed to authorize me to examine the City's actions in light of §14B, I am precluded from opining on that issue as requested by the Union and take no position as to whether the City's action violated §14B, or whether the grievant was entitled to the return of her vacation day under the statute.

The language of Article 28 is clear and unambiguous. For this article to apply, the court appearance must "arise out of his employment." There is no evidence that the matter for which Galligan was summonsed to court arose out of her employment. The incident she witnessed was not on work time and contained no nexus to her employment. In light of these facts, the City did not violate Article 28 of the Agreement when it required Galligan to use a vacation day to compensate for her absence from work for the court appearance. The grievance is denied.



Timothy Hatfield, Arbitrator