



November 24th, 2023

**To: REGIONAL VICE PRESIDENTS
BRANCHES & FACILITIES**

ACC LEAVE

For some time now, CATCA has been awaiting a decision from Arbitrator Swan regarding our grievance filed on behalf of the Vancouver ACC surrounding NAV CANADA's adherence to the provisions of leave in our collective agreement (CA). It has been a long and frustrating wait, especially given that issues around access to leave have persisted, and the previously long-standing practice of mutual agreement continues to be unattainable in the Vancouver ACC.

The grievance was denied by Mr. Swan. This is a very disappointing outcome for us. The full decision will be made available on our website for members who wish to read it in its entirety. Although we disagree with the conclusion and some of the points explained by Mr. Swan, there are several significant statements and observations made by the arbitrator that are positive for us and should provide clarity for both parties. We have consulted at the national level and the company has assured us that they will encourage managers to consult in good faith to arrive at mutually agreeable arrangements at the local level. How this translates into action remains to be seen, but we encourage all branches to approach leave consultations as they always have - with a practical, solutions-based focus that respects the rights, entitlements, and wishes of our members. We appreciate that these discussions may be especially difficult as we continue to struggle with the challenges created by NAV CANADA's ongoing staffing crisis.

The decision is open to some interpretation, and some notable elements may be relevant for current and future leave consultations:

- Mr. Swan found that: *"Taking and holding a position on a particular topic does not constitute a refusal to engage in consultation."* This can be found on page 20 of the decision. However, this in no way relieves the company of other provisions in the CA.

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- It was found that the introduction of the National Leave Guidelines was within NAV CANADA's management rights. However, Mr. Swan was clear that this was true in the circumstances of the 2021-22 Guidelines that were ultimately published by NAV. On p. 19, Mr. Swan is clear that it was because *"the final document clearly did not attempt to enforce a national approach to leave scheduling; it set out aspirations only and expressly left room for local differences"* and that the development of a national approach is not offensive to the local consultation process, *"provided that there is no arbitrary imposition of a national standard."*
- Mr. Swan makes it clear that the special circumstances of 2021-22 (i.e., COVID and the crew system) may well have made it impossible for the union to demonstrate clearly whether or not the Employer met the *"every reasonable effort"* test.
- While the arbitrator found that *"operational considerations can justify the reduction in total leave slots where such considerations reflect efficient operating requirements"*, this is qualified by the statement, *"I agree that, as stated by arbitrators in several of the awards relied on by the Union, that the Employer's obligation is not merely to act reasonably, but to make every reasonable effort. In some of the awards, a failure to ensure adequate staffing is cited as a failure to make every reasonable effort; in others a refusal to pay overtime to replace an employee taking leave is identified as failing to meet the test."* Although he found that those circumstances were not met in this case, this does not give NAV CANADA the right to rely on *"operational considerations"* to justify reducing leave slots.
- Regarding carryover leave, Mr. Swan states, *"carryover leave from the previous year ... is subject to the much more stringent conditions set out in Paragraph 27.06 (c), where scheduling is by mutual consent, and the 'every reasonable effort' obligation does not apply."*

We recognize that in the majority of units, leave consultations have been pursued more collaboratively and constructively than they have in the Vancouver ACC, but this decision is potentially relevant for all. Branch executives must recognize the relevant elements and scope of this decision, and while the grievance was ultimately denied, this does not give additional license to the company to further erode or limit member entitlements regarding leave.

On Behalf of the Executive Board;

Nick von Schoenberg
President

Scott Loder
Executive Vice President