

# Arbitrator Decides COVID-19 Pandemic Is Cataclysmic Event That Did Not Trigger Entitlement To Severance Under Layoff Provisions



In *United Utility Workers' Association of Canada v Dataco Utility Services Ltd.*, 2022 CanLII 13414 (AB GAA), Arbitrator John Moreau, Q.C., dismissed 11 grievances filed on behalf of 11 service technicians (Grievors) of Dataco Utility Services Ltd. (Company). The grievances claimed that Article 18 of the collective agreement (CA), which addressed "Layoff and Recall," had been breached and each of the Grievors was entitled to severance pay when they were suspended indefinitely beginning March 16, 2020, due to the outbreak of the COVID-19 pandemic.

## Background

The Company had 35 employees and provided electrical meter support services to utility companies in various Alberta locations. Service technicians performed financial meter disconnections, reconnections, and meter exchange work (service technician work). Hours and volume of work varied based on work assignments provided to the Company by utility companies such as Enmax in Calgary.

On March 14, 2020, the Company advised 14 service technicians that all service technician work from Enmax was suspended indefinitely beginning March 16 due to the outbreak of COVID-19 and the implementation of government measures to deal with its spread.

On April 30, 2020, the union took the position that due to the extended time employees would be without work, and the uncertainty about when work would resume, a layoff had occurred, triggering entitlement to severance pay under the Layoff and Recall provisions. The Company disagreed.

On July 10, 2020, the union filed 11 grievances claiming that Article 18 had been breached and that each Grievor was entitled to severance pay.

## **Decision**

Arbitrator Moreau noted that Article 18 did not define the term “layoff” and only referred to a layoff occurring “.due to lack of available work.” The arbitrator also emphasized:

The parties clearly intended an orderly process which respected both seniority and the need for proper notice on layoff and recall, in addition to the payment of severance. These provisions in my view are consistent and reflect how the parties envisioned a typical scenario where layoffs occurred due to a shortage of work where not all employees in the workforce were necessarily laid off at the same time.

Furthermore, the arbitrator noted that Article 18 indicated “the work disruption would typically be ‘initiated by the Company.’”

Upon considering the unique circumstances in which the layoffs occurred, the arbitrator made the following observation:

.the layoffs in this case were not initiated by the Company because of a lack of orders from a key customer as part of the ongoing business. The decision to reduce its workforce was at its root due to a cataclysmic event which shook the world and continues to do so.

The arbitrator then cited a British Columbia arbitration decision in which COVID-19 was referred to as having caused “unprecedented ramifications around the globe,” and he stated this was “a fitting description of the effects of the pandemic.” Furthermore, the arbitrator noted that on March 19, 2020, the employees were informed by the Company of the federal government’s employment assistance programs such as the Canada Emergency Response Benefit (CERB) payments of \$2,000 per month, which several employees accessed.

Ultimately, the arbitrator dismissed the grievance, concluding:

Taking a purposeful view of the collective agreement, I do not find that the parties ever intended that a world-wide pandemic which caused the Company to shut down its operations would be considered to be a lay-off which falls within the scope of article 18 and opens the door to the benefits stated therein, including severance payments.

## **Bottom Line for Employers**

Canadian employers may benefit from Arbitrator Moreau’s characterization of the COVID-19 pandemic as “a cataclysmic event which shook the world and continues to do so” causing “unprecedented ramifications around the globe.” This description may support employers’ efforts to defend against employee claims and unfavourable employment-related consequences due to COVID-19.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific*

*circumstances.*

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