

Arbitrator rules part-time university professors are hired under fixed-term employment contracts and are not eligible for ESA 6% vacation pay benefit

May 11, 2020

By Sylvain Rouleau and David Bolger

Co-author [David Bolger](#) is a Special Advisor, Legal Counsel at the University of Ottawa.

University of Ottawa and the Association of Part-Time Professors of the University of Ottawa (2020 CanLII 28645) (ON LA) April 14, 2020.

An Ontario arbitrator recently found that part-time faculty are not continuously employed between teaching contracts and are ineligible for the 6% vacation pay benefit under paragraph 35.2 (b) of the *Employment Standards Act*. Russell Goodfellow ruled that “individuals that are the subject of the grievance are not “employed” by the University between teaching assignments. There is no continuing “employment” relationship.” Under paragraph 35.2 (b) of the *Employment Standards Act*, an employee is eligible for a 6% vacation pay benefit in lieu of 4% if their “period of employment is five years or more.”

Mr. Goodfellow stated that the “issue is one of statutory interpretation. I agree with the Union that the ESA, which establishes minimum employment standards for all employees in the province, must be given a “large and liberal interpretation”, in accordance with its remedial objectives. Even with that approach, however, I am unable to find that the [part-time professors] “period(s) of employment” extend beyond the length of the individual teaching contracts.”

The Association had argued that every member’s employment for the purposes of vacation pay was continuous and without interruption from the end of each teaching contract to the beginning of the next contract. If this period did not exceed 24 months, they still retained their seniority points. The Association submitted that any members who had been teaching for five years or more at the University should receive a 6% vacation pay benefit. The Association also argued that the period between contracts was “inactive employment” and that their members were laid off.

The University pointed out that each part-time teaching contract had a clearly defined start date and end date. This was stated plainly in the collective agreement and consequently, no member could accumulate five years of uninterrupted service to qualify for the 6% vacation pay benefit. The University also argued that the members were not laid off since they were not subject to recall as set out in the *Employment Standards Act*.

Arbitrator Goodfellow agreed with the University and dismissed the grievance, saying “I cannot treat as continuing employment that which the parties have clearly established as fixed-term employment.” The arbitrator found that the 24-month period “after an individual’s last appointment during which any accumulated seniority points are retained is not “inactive employment”, as the Union submits, it is, unfortunately, “unemployment”, as the University submits. There is no basis upon which it can be included in an individual’s “period of employment” under s. 35.2(b) of the *ESA*.”

Arbitrator Goodfellow also dismissed the argument that seniority points were somehow related to continuing employment. He said that seniority points do not “provide for, require, contemplate, assume, reflect, or imply, continuity of employment.”

The information and comments herein are for the general information and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, please contact any of our lawyers for further guidance.

For more information or inquiries:



Sylvain Rouleau

Toronto
416.947.5016

Email:
srouleau@weirfoulds.com

Sylvain Rouleau is a litigation partner at WeirFoulds LLP where he specializes in public, administrative and constitutional law, as well as municipal and land use planning law.

WeirFouldsLLP

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035