CONTRACT INTERPRETATION MANUAL

Article 51 PORTABILITY

Interpretation Guidelines

Article 51.01 – Portability

A regular employee who terminates with one PCA Employer is entitled to port specified benefits to another PCA Employer, when they meet the following criteria:

1. The employee must be re-employed as a regular employee;
2. Within 180 calendar days from their date of termination; and
3. With the same or another Employer covered by the PCA.

The period of 180 days out of service is excluded from the calculation of benefits. In other words, if the employee isn't working at all during those 180 days, the employee may need to make alternate arrangements for health plan coverage to cover the gap.

If the employee is hired as a casual, but applied for a regular position, they may be eligible for portability of benefits, however:

1. The employee needs to ensure that it's noted in their letter of appointment that they are seeking regular employment; and
2. This will extend the portability period to 365 calendar days from the date of termination with the previous Employer.

Article 51.02 - Portable Benefits

Increments

The salary increment step from Employer A is transferred to Employer B. While arbitrators have taken opposite positions on the application of this clause, the same principle appears to apply. An employee is not permitted to obtain a superior benefit to that of other employees from exploiting the two variables (increment step and hourly wage rate) in the wage schedule. A summary of two arbitration decisions follows:

1. Simon Fraser Health Region (Queen's Park Care Centre) and BCNU, February 23, 2001 (Brokenshire).
    (a) Where the employee transferred from a Level 1 position to a Level 2 position, the Arbitrator ruled that it is their hourly wage rate that gets transferred, not the increment step.
    (b) In this case the grievor was employed in a DC1 position at Vancouver General and successfully applied for a direct care position at Queen's Park.
    (c) However, all the direct care positions at Queen's Park were paid at DC2.
    (d) The Union was unsuccessful in arguing that the grievor should be placed at Step 6 of the DC2 level.
    (e) The Arbitrator ruled that in this case the grievor was only entitled to port their hourly wage rate from her previous Employer.

i. The Arbitrator in this case said the words wages and salary have the same meaning.
ii. Then they went on to state: " that the transfer of the increment step in these circumstances would have resulted in an extraordinary benefit; that the portability provisions were meant to preserve an employee's existing benefits, not to significantly expand them".
iii. Please note that since this arbitration changes have been made to terminology used to describe the Levels. DC1 is equivalent to Level 3 and DC2 is equivalent to Level 4.

2. HEABC (Vancouver Island Health Authority) and BCNU, September 30, 2004 (Lanyon).
   (a) Where an employee transferred from a regular position paid at the DC2 to casual status paid at DC1, an arbitrator ruled that they port their increment step, not their hourly wage rate.
   (b) In this case the grievor had been working as a charge nurse paid at DC2.
   (c) Following the deletion of their position they chose the option of retiring then going to casual status where the classification was DC1.
   (d) Based on the arbitration decision described in (1) above, the Union argued that the grievor should be able to port their hourly wage rate.
   (e) The Arbitrator disagreed using the rationale that the words in Article 11.04 (F) (3) must be seen within the context of Article 12, 61 and 62 and concluded that in each of these two cases the grievors sought to "employ one of two variables in the wage schedule, either the classification level or the increment rate, in order to pyramid a benefit greater than that contemplated by the collective agreement".
      i. The employee stays 12 months at that increment step from the start date at Employer B.
      ii. This means the employee could end up staying at the same increment step for up to two years.
      iii. Therefore, where possible, the decision to transfer to another Employer needs to be made strategically.
      iv. In other words, it would be better if employees timed their move to a new Employer to occur just after they've moved to the next increment step.
      v. An increment anniversary date becomes the 1st date of regular employment at Employer B.

3. HEABC on behalf of Northern Health Authority vs BCNU, January 20, 2017 (Bell).
   (a) The Arbitrator wrote "However, I disagree that Article 51.02(A) requires the Griever to earn a Red Circled DC 1 position wage rate when accepting a DC 2 position at a new place of employment. In reading the Collective Agreement and the case law presented by the parties, I cannot conclude that was the mutual intent of the parties. Rather, in applying Article 51.02(A), the Employer ought to have placed the Griever in an increment step/wage rate negotiated in Article 62 of the Collective Agreement. Because [their]DC 1 position wage rate did not fit with the new DC 2 Position wage scale, I find that [they]ought to have received the wage rate at the increment step one level higher on the DC 2 Position wage scale at the time of hire. It is so awarded."
   (b) Meaning that promotional language should also apply to portability if requirements are met.

Sick Leave

1. Sick leave earned at Employer A is transferred to Employer B.

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Vacation Entitlement

1. Years of service for vacation entitlement earned during previous employment are transferred to Employer B. This is to ensure there is no interruption in the continuity of service and for the purpose of determining future vacation entitlement at Employer B. However, the actual vacation days earned up to the employee's date of resignation need to be either taken or they are paid out on leaving Employer A.

Medical, Dental, Extended Health Coverage

1. Coverage is effective the 1st day of the month, following the initial date of regular employment with Employer B.

Municipal Pension Plan

1. Eligible employees must continue contributing from their 1st day of employment whether as a casual or regular employee with Employer B.

Qualification Differential

1. Employees who were on staff as of January 1, 1974 and who are receiving the qualification differential (Articles 53.01 and 53.04) at Employer A are entitled to port this differential to Employer B (the eligibility requirements for these two differentials were different before 1974).
2. The differential for BSN is portable for those already being paid the differential (Article 53.05). Casuals who were already employed prior to April 1, 2016 are not considered new hires. If they become regular they would then have 1 year with a new Employer to port the differential.

Severance Allowance

1. Employees who voluntarily resign from an Employer covered by the PCA and who are hired within 1 year by another PCA Employer have portability of length of service for the purpose of determining severance allowance. The foregoing only applies to employees who ported on or after January 1, 1976 (Article 55.04).

Seniority

1. Employees are entitled to transfer their seniority from one PCA Employer to another.

LTD

1. LTD is not portable so as a result, employees are not eligible for coverage until after their 3 month probationary period with the new Employer.

Special Leave Banks

1. New in 2016, it was agreed between the parties that special leave banks were also portable see below Joint Interpretation.

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HEABC-NBA Provincial Collective Agreement - Joint Interpretation

ARTICLE 51 – PORTABILITY

HEABC and the NBA agreed to one change to Article 51 in the 2014-2019 Provincial Collective Agreement, which is summarized below:

The parties have agreed that nurses that move from one employer to another will be entitled to port accrued special leave hours to the new employer if they meet the portability criteria set out in Article 51.01.

Casual employees need to refer to Article 11.04 (F) Wage Entitlement for portability rights.

Arbitration Awards

1. HEABC and BCNU, August 12, 1999 (Ready). Dealt with application of portability and previous experience to nurses transferring into the community between June 1, 1997 and April 1, 1999.
2. Simon Fraser Health Region and BCNU (Ready), January 27, 2000. Award speaks to employee working regular at Facility A and casual at Facility B before commencing regular employment at Facility B. The award allows the porting of seniority from A to B.
3. Simon Fraser Health Region and BCNU, March 23, 2001 (Ready). Consent order recognizing that the Employer was liable for the representations made regarding entitlement to portability between April 1, 1997 to April 1, 1999.
4. Simon Fraser Health Region (Queen's Park Care Centre) and BCNU, February 23, 2001 (Brokenshire). Where the employee transferred from a Level 1 position to a Level 2 position, the Arbitrator ruled that it is their hourly wage rate that gets transferred, not the increment step.
5. HEABC (Vancouver Island Health Authority) and BCNU, September 30, 2004 (Lanyon). Where an employee transferred from a regular position paid at the DC2 to casual status paid at DC1, an arbitrator ruled that they port their increment step, not their hourly wage rate.
6. HEABC on behalf of Northern Health Authority vs BCNU, January 20, 2017 (Bell). Wage Rate/Increment Step Grievance.

Footnotes

Article	51
Sub-Article	51.01, 51.02
Last Update	31-03-21
Related Articles	1, 11, 12, 13, 42, 45, 49, 53, 55, 62, 63, Appendix DD