

## Article 51

### Article 51 - Portability

Related Articles: 1.02, 11.04 (F), 12, 13, 42.01, 45.01, 49, 53.01, 53.04, 55.04, 61, 62, Appendix C

#### Interpretation Guidelines:

#### Article 51.01 - Portability

1. 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:
  - The employee must be re-employed as a regular employee;
  - Effective May 4, 2006: Within ~~90 calendar days~~ 180 calendar days from their date of termination;
  - With the same or another Employer covered by the PCA.
2. Effective May 4, 2006: The period of ~~90 days~~ 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.
3. If the employee is hired as a casual employee, but applied for a regular position, they may be eligible for portability of benefits, however:
  - The employee needs ensure that it's noted in their letter of appointment that she/he is seeking regular employment;
  - This will extend the portability period to ~~150 calendar days~~ 365 calendar days from the date of termination with the previous Employer.

#### Article 51.02 - Portable Benefits

1. Increments
  - a. 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. Namely: 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:

- In Arbitration Award: *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.

## Article 51

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. However all the direct care positions at Queen's Park were paid at DC2. The Union was unsuccessful in arguing that the grievor should be placed at Step 6 of the DC2 level. The arbitrator ruled that in this case the grievor was only entitled to port their hourly wage rate from her previous Employer. The Arbitrator in this case said the words wages and salary have the same meaning. Then he 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".

- In the Arbitration Award: *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.

In this case the grievor had been working as a charge nurse paid at DC2. Following the deletion of his position he chose the option of retiring then going to casual status where the classification was DC1. Based on the arbitration decision described in (a) above, the Union argued that the grievor should be able to port his hourly wage rate. 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".

- The employee stays 12 months at that increment step from the start date at Employer B.

**Note:** This means the employee could end up staying at the same increment step for up to two years. Therefore, where possible, the decision to transfer to another employer needs to be made strategically. 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.

- An increment anniversary date becomes the 1<sup>st</sup> date of regular employment at Employer B.
2. Sick Leave
    - Sick leave earned at Employer A is transferred to Employer B.

## Article 51

### 3. Vacation Entitlement

- Years of service for vacation entitlement earned during previous employment are transferred to Employer A. 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.

### 4. Medical, Dental, Extended Health Coverage

- Coverage is effective the 1<sup>st</sup> day of the month, following the initial date of regular employment with Employer B.

### 5. Municipal Superannuation

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

### 6. Qualification Differential

- Employees who were on staff as of January 1, 1974 and who are receiving the qualification differential (under Articles 53.01 and 53.04) at Employer A are entitled to port this differential to Employer B (Note: the eligibility requirements for these two differentials were different before 1974).

### 7. Severance Allowance

- 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.
- Note: the foregoing only applies to employees who ported on or after January 1, 1976 (See Article 55.04 for further information).

### 8. New in 2006

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

### 9. **Please Note:** 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.

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

## Article 51

### Additional References:

### Arbitration Awards:

*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.

*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.

*Simon Fraser Health Region (Queen's Park Care Centre) and BCNU, February 23, 2001 (Brokenshire)* Where the employee transferred from a Level One position to a Level 2 position, the Arbitrator ruled that it is their hourly wage rate that gets transferred, not the increment step.

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