IN THE MATTER OF AN ARBITRATION
UNDER THE *LABOUR RELATIONS CODE*, RSBC 1996 c. 244

Between

BRITISH COLUMBIA GENERAL EMPLOYEES' UNION

(the "Employer" or "BCGEU")

-and-

BC UNION WORKERS' UNION

(the "Union" or "BCUWU")

(Ryan Stewart and Satkaran Sandhu Grievances)

ARBITRATOR:	John B. Hall
APPEARANCES:	Matthew Cooperwilliams, for the Employer Esther Ostrower, for the Union
DATE OF HEARING:	February 19, 2026
AWARD:	May 5, 2026

AWARD

I. INTRODUCTION

The Union has advanced two grievances to arbitration on behalf of two members claiming vacation days and vacation pay for the time they were on parental and/or maternity leave. The Employer, a trade union, resists the claims based on Articles 27.10(c)(2) and (3) of the Collective Agreement. Those provisions respectively deny accrued vacation entitlements and vacation pay if an employee received a parental allowance while on leave and, additionally, deny the same benefits if an employee was not employed prior to September 30, 2002.

The Union submits that vacation entitlements under the present Collective Agreement are a "status-driven" as opposed to a "work-driven" benefit. It says it is a violation of the *Human Rights Code* to deny status-driven benefits to employees on the basis of a protected ground. As a result, the Union claims Articles 27.10(c)(2) and (3) violate the Code.

The Union also submits those same Articles violate the *Employment Standards Act* which requires that employees be credited with service as though their service was continuous throughout a period of maternity/parental leave. On behalf of the Grievors, and in its own right, the Union seeks a "meaningful remedy". More particularly, it asks for a declaration that the impugned articles be stricken from the Collective Agreement and that the Grievors receive their full vacation entitlements without deduction for the periods of their parental leaves.

Conversely, the Employer submits that vacation entitlements are a work-driven benefit and, accordingly, there has been no discrimination. In this regard, it says Article 15.1(e) of the parties' Collective Agreement, which provides that vacation entitlements shall not accrue for periods of unpaid leave of absence in excess of 20 working days at any one time, is "determinative". The Employer maintains that the parties thereby agreed that employees would not accrue vacation entitlements when they were not working "except in those specific, limited circumstances".

The Employer additionally submits that there has not been a violation of the *Employment Standards Act* because the Collective Agreement distinguishes between entitlement to vacation leave and entitlement to vacation pay. Therefore, employees on parental or maternity leave do not accrue vacation pay because they do not have any earnings during those leaves on which entitlement to vacation pay can be based.

The Employer accordingly maintains that there has not been a violation of either statute. In the "unlikely event" that provisions in issue are found to breach either the Code or the Act, the Employer submits a suspended declaration should be issued and the matter should be remitted to the parties to address in collective bargaining with an arbitral retention of jurisdiction if they are unable to resolve the matter.

Thus, three issues potentially arise for determination in the present case:

1. Do Articles 27.10(c)(2) and (3) violate the *Human Rights Code* (the "Code") because they deny a status-based benefit on a protected ground, or is vacation entitlement a work-driven benefit? (I note that the Employer does not contest that both provisions are discriminatory if vacation entitlement is held to be a status-based benefit)

2. Does the parties' Collective Agreement distinguish between entitlement to vacation leave and entitlement to vacation pay (thus allowing vacation pay to be based on actual wages earned during the year), or must employees be credited with service while on parental leave as if their service was continuous pursuant to the *Employment Standards Act* (the "Act")?

3. If a breach of either the Code or the Act is found, what is the appropriate remedy?

II. AGREED FACTS

The parties proceeded by way of an Agreed Statement of Facts and a Joint Book of Exhibits. No witnesses were called. The Agreed Facts are set out below without material alteration:

Relevant Collective Agreement Provisions:

1. At the time Ryan Stewart's leave began, the Collective Agreement between the parties was dated April 1, 2021 to March 31, 2023.

2. The current Collective Agreement between the parties is April 1, 2023 until March 31, 2026.

3. The relevant provisions in Article 15 (vacation entitlement) and Article 27 relating to maternity/parental leave are the same in both Collective Agreements.

4. Article 15 provides for Vacation Entitlement.

5. Article 27 addresses Maternity and Parental Leaves.

Ryan Stewart:

6. Ryan was a temporary employee at the BCGEU from July 2, 2014 to September 3, 2015.

7. Ryan returned to the BCGEU as a temporary employee on April 9, 2018.

8. Ryan was awarded a regular position on January 28, 2019.

9. He originally applied to go on parental leave on July 26, 2022.

10. He indicated that the dates he would be away were December 5, 2022 to August 4, 2023.

11. In his original email to Human Resources, on July 26, 2022, he indicated that Clause 27.8(b), 27.9 and 27.10(c) in the Collective Agreement between the parties was of no force as contrary to the *Employment Standards Act*.

12. After speaking to Bertha Bell in Human Resources, he received the documents to sign for his parental leave in an email July 29, 2022.

13. The dates of the parental leave had been changed to reflect the one-week waiting period and his new dates of parental leave were November 25, 2022 to July 31, 2023.

14. His vacation days were pro-rated for his parental leave in the email of July 29, 2022.

15. He filed a grievance on July 29, 2022 in anticipation of reduced vacation entitlement due to Article 27.10(c) of the April 1, 2021 to March 31, 2023 Collective Agreement between the parties.

16. He changed his parental leave dates again based on the need to use his remaining 2022 vacation dates.

17. He was off on 35 weeks of parental leave from January 2, 2023 until September 1, 2023, returning to work September 5, 2023.

18. He received Employment Insurance Benefits and the top up by the Employer as per Article 27.6 of the Collective Agreement for the 35 weeks, from January 2, 2023 until September 1, 2023.

19. He was credited with seniority for the time that he was on parental leave.

20. Had he not gone on parental leave and collected Employment Insurance Benefits, he would have been entitled to 25 vacation days in 2023 based on his seniority and vacation entitlement contained in Article 15 of the Collective Agreement between the parties.

21. He was credited with 8 vacation days in 2023.

Satkaran Sandhu:

22. Satkaran Sandhu began work at the BCGEU as a co-op student from September 5 to December 15, 2017.

23. Satkaran returned to the BCGEU as an articled student from September 10, 2018 to September 13, 2019.

24. Satkaran was awarded a regular staff representative position on November 7, 2022.

25. Satkaran took a maternity and parental leave from December 7, 2022 to December 11, 2023.

26. During that maternity and parental leave she did not accrue vacation entitlement.

27. She applied for maternity/paternal leave again in the fall of 2024.

28. She wrote to Bertha Bell in the Human Resources Department on December 2, 2024 and asked about the accrual of vacation and lieu time while she would be on leave.

29. She was told on December 3, 2024 by email from Bertha Bell that she would not accrue vacation or lieu days during her leave period.

30. She filed a grievance on December 19, 2024 in anticipation of the reduced vacation entitlement while on her upcoming leave.

31. She was on maternity leave beginning January 6, 2025. January 6 to10th, 2025 was her 1 week waiting period for the Supplementary Unemployment Benefit (SUB) Plan and she received 85% of her basic pay from the Employer.

32. Her 15 weeks of maternity leave were from January 13 until April 25, 2025.

33. She received employment insurance and salary top up payments to 85% of her basic pay during that time.

34. She began her parental leave on April 28th, 2025. She chose to take 45 weeks of parental leave with employment insurance and wages up to 75% of her basic pay. It is pro-rated as if she had taken 35 weeks of parental leave (Article 27.6(b)). This parental leave will end March 6, 2026.

35. From March 9, 2026 to March 13, 2026, she will receive one week of 85% of basic pay according to information from Human Resources, BCGEU.

36. On March 16, 2026 she will begin an extended child care leave without pay (Article 27.13).

37. This is an unpaid leave until July 1, 2026.

38. She plans to return to work on July 2, 2026.

39. She understands that she will be credited with seniority for the time that she was on maternity and parental leave upon her return to work.

40. Had she not gone on parental leave and collected Employment Insurance Benefits in 2025, she would have been entitled to 25 vacation days in 2025 based on her seniority and vacation entitlement contained in Article 15 of the Collective Agreement between the parties.

41. Had she not organized to be on parental leave and collected Employment Insurance Benefits in 2026, she would be entitled to vacation days in 2026 based on her seniority and vacation entitlement contained in Article 15 of the Collective Agreement.

42. Human Resources has not informed her of how many vacation days she will be credited for 2025.

43. Human Resources has not informed her of how many vacation days she will be credited for 2026.

III. APPLICABLE COLLECTIVE AGREEMENT PROVISIONS

Article 9.1 is headed "Seniority Defined" and provides in sub-article (a) that "*Service Seniority* – shall mean the total length of service with the BCGEU". Article 15.1 sets out vacation "Entitlement" and provides in full as follows:

> *(a) Full-time employees covered by this Agreement shall earn five weeks' vacation during each year of service seniority except as otherwise specified in this Article. There shall be no cash payout for vacation entitlement.*
>
> (b) Full-time employees with more than six full years of service seniority with the BCGEU shall earn additional vacation entitlement as follows:
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> - after six years — one additional day;
> - after seven years — two additional days;
> - after eight years — three additional days;
> - after nine years — four additional days;
> - after 10 years — five additional days;
>
> to a maximum of six weeks.
>
> (c) Full-time employees with more than 14 full years of service with the BCGEU shall earn additional vacation entitlement as follows:
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> - after 14 years — one additional day;
> - after 15 years — two additional days;
> - after 16 years — three additional days;
> - after 17 years — four additional days;
> - after 18 years — five additional days;
>
> to a maximum of seven weeks.
>
> *(d) Full-time employees shall be entitled to full vacation in the year in which they retire.*

(e) Effective January 1, 2000, vacation entitlement shall not accrue for periods of unpaid leave of absence in excess of 20 workdays at any one time or for periods of sick leave in excess of 40 workdays at any one time.[1]

Article 27 is headed "Pregnancy, Parental, Adoption and Pre-Adoption Leave". Article 27.10 contains the provisions now in dispute:

27.10 Entitlements Upon Return to Work

(a) An employee who returns to work after the expiration of maternity, parental, adoption and/or pre-adoption leaves shall retain the unit and service seniority the employee had accumulated prior to commencing the leave and shall be credited with unit and service seniority for the period of time covered by the leave.

(b) On return from maternity, parental, adoption and/or pre-adoption leaves, an employee shall be placed in the employee's former position.

(c) Notwithstanding Clauses 15.1 and 15.8, vacation entitlements and vacation pay shall continue to accrue while an employee is on leave pursuant to Clause 27.1 and its waiting period providing:

(1) The employee returns to work for a period of not less than six months, and
(2) The employee has not received parental allowance pursuant to 27.6, and
(3) The employee was employed prior to September 30, 2002.

Vacation earned pursuant to this clause may be carried over to the following year, notwithstanding Clause 15.8.

(d) Employees who are unable to complete the return to work period in 27.10(c)(1) as a result of proceeding on maternity, parental, adoption and/or pre-adoption leave shall be credited with their earned vacation entitlements and vacation pay providing the employee returns to work for a period of not less than six months following the expiration of the subsequent maternity, parental or pre-adoption leave.

Article 15.8 (referred to as Clause 15.8 in the above) deals with the "Carryover" of vacation. It provides in Article 15.8(a) that an employee may carry over up to five days' vacation

[1] It is common ground that Article 15.1(e) was inadvertently omitted from the 2021-2023 Collective Agreement.

leave per vacation year" … except that such vacation carry over shall not exceed 15 days at any time".

IV. RELEVANT LEGISLATION

Section 13 of the *Human Rights Code* prohibits discrimination in employment on the following grounds:

> 13 (1) A person must not
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> (a) refuse to employ or refuse to continue to employ a person, or
>
> (b) discriminate against a person regarding employment or any term or condition of employment
>
> because of the Indigenous identity, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

Section 3(1) of the *Employment Standards Act* provides that it applies to all employees other than those excluded by regulation (it is not argued that the Grievors are excluded by regulation). Section 4 of the Act provides that its requirements are "…minimum requirements and an agreement to waive any of those requirements, not being an arrangement referred to in Section 3(2), has no effect". Part 6 of the Act deals with Leaves and Jury Duty. Parental leave is detailed at Section 51 in Part 6. Section 56(1) states:

> 56 (1) The services of an employee who is on leave under this Part or is attending court as a juror are deemed to be continuous for the purposes of
>
> (a) calculating annual vacation entitlement and entitlement under section 63 and 64, and …

Section 56(3) provides further that "[an] employee is entitled to all increases in wages and benefits the employee would have been entitled to had the leave not been taken or the attendance as a juror not been required".

The Union relies in part on the *Guide to the Employment Standards Act and Regulations* which was last updated on November 28, 2025. The guide states expressly that it is not a "legal document". In relation to parental and jury duty, the guide provides the following Policy Interpretation:

> Employees absent due to leave or jury duty under this Part, are considered to have continuous service during their absence for the purpose of calculating entitlements to vacation, vacation pay, and notice of termination of employment. Employees must be credited with service as though service was **continuous** throughout the period of absence.
>
> Most leaves under Part 6, including jury duty, are unpaid leave. However, as a result of an agreement between the employer and the employee or where there are terms in an employee's contract of employment, leave may be with pay.
>
> Employees should not be in a better or worse position because of having taken a leave or being placed on jury duty (bold in original text)

The Employer relies on different elements of the same Guide. Under the heading of "Vacation and Vacation Pay" one finds what the Employer characterizes as "…a non-binding but instructive description of the issue [that arises under the Act]:"

> If vacation entitlement, under a contract of employment, is based on **paid** weeks of vacation, then the vacation time and pay would remain the same. If the vacation pay is based on a percentage of earnings, then the employee is still entitled to the vacation time, by the pay may reflect the reduced earnings, based on actual wages earned in the vacation year. (bold in original text)

This passage is immediately followed in the Guide by a sentence relied on by the Union:

> An employer who has agreed to grant vacation or vacation pay in excess of minimum standards cannot reduce vacation or vacation pay because an employee is on leave or jury duty under this Part.

V. ANALYSIS

(a) The *Human Rights Code*

The parties agree on the principles relevant to the human rights analysis. In determining whether there is a breach of the Code in this case, the critical question is whether employees who are on parental leave are being denied a "status-driven" benefit or "work-driven" benefit as only denial of the former amounts to prohibited discrimination. The distinction is a matter of contract interpretation which must be answered in accordance with the usual "canons of construction": *Pacific Press Ltd.*, [1995] BCCAAA No. 637 (Bird).

I previously had occasion to adjudicate an analogous issue in *Burnaby (City) -and- Canadian Union of Public Employees, Local 23 (Vacation Pro-Rating Grievance)*, [2015] BCCAAA No. 136, ("*Burnaby*"). The authorities referred to by both parties here cite that award. In the course of my extensive analysis in *Burnaby*, I canvassed several leading authorities including *Ontario Nurses' Association v. Orillia Soldiers Memorial Hospital et al.* (1999), 42 OR (3d) 692 (CA), application for leave to appeal denied in [1999] SCCA No. 118; and *Canadian Union of Labour Employees -and- Public Service Alliance of Canada*, [2015] OLAA No. 157 (Lynk), (the "*Urrutia Grievance*"). My award in *Burnaby* was subsequently referred to with apparent approval in *Vancouver (City) -and- Canadian Union of Public Employees, Local 15 (Vacation Prorating Grievance),* [2018] BCCAAA No. 112 (McPhillips), ("*City of Vancouver*").

A helpful starting point is the framework set out in Arbitrator Lynk's award the *Urrutia Grievance*, at paragraph 51:

> ii. When assessing whether a particular form of compensation, whether wages or benefits, is consistent with human rights obligations, the purpose of the compensation item must be determined.
>
> iii. If the purpose of the compensation item is to provide an equitable exchange for an active work status, then tying the availability of the compensation item to maintaining that status is consistent with human rights. Employer payments for benefit insurance premiums would be an example of this.

> iv. If, however, the purpose of the compensation item is linked to an employee's general employment status, then the availability of the compensation item is to be extended to any employee, whether on active work status or not, as long as he or she maintains the employment status. Seniority accumulation is an example of this.

It is accordingly necessary to ascertain the basis for vacation days and vacation pay under the present Collective Agreement. As stated, the Union submits vacation entitlement is a status-based benefit in its Collective Agreement with the BCGEU.

Article 15 shows that vacation is based on seniority with the specific entitlement tied to years of service. For the first five years of employment, full-time employees are entitled to five weeks of vacation based on service seniority in accordance with Article 15.1(a). Full-time employees with more than six years of service then earn additional vacation entitlement in accordance with Article 15.1(b). Next, full-time employees with more than 14 years of service earn additional vacation entitlements in accordance with Article 15.1(c). The Union emphasizes that full-time employees "… shall be entitled to full vacation in the year in which they retire" under Article 15.1(d). Further, employees "collect seniority" if they are on maternity, parental or adoptive leave under Article 27.10:

> 27.10 Entitlements Upon Return to Work
>
> (a) An employee who returns to work after the expiration of maternity, parental, adoption and/or pre-adoption leaves shall retain the unit and service seniority the employee had accumulated prior to commencing the leave and shall be credited with unit and service seniority for the period of time covered by the leave.

The Union notes that comparable seniority and vacation provisions were found to constitute status-driven benefits in the *Burnaby* and *City of Vancouver* cases.

The Employer asserts there is "no question" that the parties mutually intended vacation entitlement to be a work-driven benefit, and points to Article 15.1(e) as the "determinative" provision. It provides:

> (e) Effective January 1, 2000, vacation entitlement shall not accrue for periods of unpaid leave of absence in excess of 20 workdays at any one time or for periods of sick leave in excess of 40 workdays at any one time.

The Employer maintains the parties agreed that employees would not accrue vacation entitlements when they were not working "… except in [these] specific, limited circumstances". It relies further on other provisions of the Collective Agreement which it says are similarly based on work rather than status. For instance, in Article 12.2 the parties agreed that lieu days shall not accrue for periods of unpaid leave of absence or for paid leaves of absence in excess of 20 working days at any one time. In Article 22.1(c), they agreed that entitlement to vehicle stipends cease after 29 weeks on leave. The Employer contrasts what it characterizes as the "parties' plain agreement" in Article 15.1(e) that employees will not accrue vacation entitlement when they are not working with provisions elsewhere in the Collective Agreement. For example, under Articles 5(a), (c) and (d) employees are entitled to leaves of absence without loss of pay for, respectively, collective bargaining, processing grievances and testifying at an arbitration. Another example is Article 10.4(b) which provides that severance pay in the event of layoff is based on years of service rather than on work. The Employer refers to some 10 other examples to support its position that vacation entitlement is a work-driven rather than status-driven benefit.

I do not accept the Employer's view of the parties' Collective Agreement. At most, Article 15.1(e) injects a note of ambiguity into what they mutually intended. As the Union observes, the provision allows for the accrual of vacation entitlement for periods of unpaid leave of absence for the first 19 work days (or for periods of sick leave for the first 39 work days) – it does not stand for the principle that vacation is a work related benefit "full stop". In my view, the better interpretation is that the parties intended vacation entitlement to be a status-based benefit but they additionally chose to place limits (or a "cap") on periods of unpaid leaves of absence and sick leave. That is, the general approach is that vacation entitlement is a service-based benefit but there are certain limitations as to when this service-based entitlement will cease to accrue. It is my further view that Articles 12.2 and 22.1(c) represent analogous limitations and do not support the argument that vacation entitlement is a work-driven benefit. Nor do the examples put forward by the Employer where the parties have based entitlement on years of service without such limitations (e.g. Article 10.4(b) of the Collective Agreement) detract from this conclusion.

I have accordingly concluded, as a matter of contract interpretation, that vacation entitlement under this Collective Agreement is a status-based benefit. Under the prevailing human rights analysis, the Union must demonstrate that Articles 27.10(2) and (3) are *prima facie* discriminatory on the balance of probabilities. This means showing that the Grievors were affected due to characteristics protected under the Code; they experienced an adverse impact; and, the protected characteristic was a factor in the adverse impact. The Union argues as follows:

> Both Grievors have been discriminated on the basis of family status. Their loss of vacation entitlement is for the time that they were on parental leave. They have suffered the loss of vacation time and vacation compensation. But for being on parental leave, the Grievors would have had their full vacation entitlement.

I agree and find Article 27.10(2) and (3) discriminated against the Grievors based on the fact that they were on parental leave and were not employed prior to September 30, 2002. Once again, the Employer did not contest that both impugned provisions are discriminatory if vacation entitlement was found to be a status-based benefit.

(b) The *Employment Standards Act*

The Union submits employees on maternity/parental leave should accrue benefits -- in particular, both vacation and vacation pay -- that they would have earned if they had not taken the leave. That is, they should not be in a better or worse position because of having taken leave under Part 6 of the Code. The Employer says the question is whether the parties' Collective Agreement distinguishes between entitlement to vacation leave and entitlement to vacation pay. If so, an employer may refuse to accrue an employee's benefit entitlement to vacation pay while they are on maternity leave or parental leave because they do not have earnings during such leaves on which entitlement to vacation pay can be based. In support of this position, the Employer points to provisions of the *Guide to the Employment Standards Act* reproduced above.

Both parties refer to the award of Arbitrator Gordon in *Langley (City) -and- Canadian Union of Public Employees, Local 2058*, [1997] BCCAAA No. 634, where one finds the following conclusions regarding Section 56(1) of the Act:

> Applying the remarks and reasoning in these materials to the collective agreement at hand, I am satisfied that the above-noted interpretation is consistent with the Act. Section 56(1) deems the services of an employee on maternity leave to be continuous for the purpose of calculating vacation entitlement. This protection means that an employee under sections 5.03(c-f) will not lose her place on the vacation grid and will be able to claim the full number of vacation days off with pay at the regular rate. The specific days off work with pay are tied solely to service which is deemed to be continuous during maternity leave. … In other words, section 56(1) ensures that in the year an employee takes maternity leave she is not in a better or worse position. She is still entitled to claim the full vacation benefit entitlement, namely, the greater of the days off with pay or the percentage total of earnings. … (para. 84)

The Employer relies on this passage to submit a careful analysis of the parties' Collective Agreement is required to determine the case at hand. It notes the parties have used a variety of words and phrases to describe vacation entitlement, and submits this "inconsistent and imprecise language" does not assist the arbitration board in determining whether their agreement distinguishes between entitlement to vacation leave and vacation pay; however, it submits a number of provisions clearly establishes that distinction.

The first example put forward by the Employer is Article 15.1(a) which provides in part that "… there shall be *no cash payout* for vacation entitlement" (emphasis added). It says it is implicit in this provision that vacation entitlement has a "cash value" distinct from entitlement to take the vacation leave. The Employer relies on the principle that all terms in a collective agreement must be assumed to exist for a reason and should be given meaning.

I am unable to detect the distinction in Article 15.1(a) which the Employer asserts. The Article provides in full:

> (a) Full-time employees covered by this Agreement shall earn five weeks' vacation during each year of service seniority except as otherwise specified in this Article. There shall be no cash payout for vacation entitlement.

As the Union argues, there is no suggestion in the first sentence that entitlement to vacation and entitlement to vacation pay are different concepts. Indeed, the second sentence suggests exactly the opposite – "[t]here shall be no cash payout for vacation entitlement". I find this confirms that vacation time and vacation payment must be taken at the same time and are not distinguishable.

The Employer points next to Article 15.2 which provides that employees who terminate with less than one year of service "… shall earn vacation pay at six percent of gross earnings". It submits employees are only entitled to payment out of vacation pay at the prescribed rate and not entitled to vacation leave at all. I find the Employer has described accurately the application of Article 15.2 of the parties' Collective Agreement. However, a complete response lies in the fact that employees do not earn entitlement to vacation leave with pay until they have completed one year of service. This is one of the exceptions contemplated in Article 15.1(a) (i.e., "unless otherwise specified in this Article"), and does not establish a general rule that vacation leave is distinguished from vacation pay.

The Employer also relies on several aspects of Article 15.9 which provides for a "Vacation Allowance/RRSP". The short answer, as the Union argues, is that the vacation allowance/RRSP is separate from vacation entitlement. Thus, I find the various provisions in Article 15.9 relied upon by the Employer do not assist in determining whether the parties have distinguished between entitlement to vacation leave and entitlement to vacation pay.

Finally, the Employer points to several provisions in Article 23 which address "Temporary Staff". In my view, those provisions are likewise of no assistance. Collective agreements often contain separate language respecting temporary staff, casuals and other categories of employees. The Employer correctly observes that vacation pay for temporary employees is calculated as a percentage of salary under Article 23.3(a), and that vacation leave for temporary employees who complete 12 months of temporary employment are entitled to "five weeks of vacation (10% of salary in lieu)" under Article 23.3(e). However, and in comparison, the clarity found in those provisions supports the opposite of the conclusion urged by the Employer.

I return then to the language found in Articles 15.1(a) through (c) of the Collective Agreement. Article 15.1(a) provides the general principle that full-time employees "shall earn five weeks vacation during each year of service" except as otherwise specified in that Article. Full-time employees with more than six years of service seniority "… shall earn additional vacation entitlement as follows" under Article 15.1(b). Similarly, full-time employees with more than 14 years of service "… shall earn additional vacation entitlement as follows" under Article 15.1(c). No distinction can be found between entitlement to vacation leave and entitlement to vacation pay under Article 15.1(a) through (c) -- those Articles refer simply to "vacation" and "addition vacation" entitlement. There is likewise no indication that there exists such a distinction in the "Carryover" language found in Article 15.8 of the Collective Agreement. And there is certainly no suggestion that vacation pay is "based on a percentage of earnings" contrary to provisions of the *Guide* relied upon by the Employer.

I therefore find that the Grievors were improperly denied vacation benefits (i.e., both vacation entitlement and vacation pay) for the periods of time they were respectively on maternity/parental leave, contrary to Section 56(1) and (3) of the Act. More specifically, Mr. Stewart was entitled to annual vacation of 25 days while on parental leave and is thus owed 17 days. Ms. Sandhu is entitled to receive all of her vacation allotment and vacation pay for the periods of time she was (and will be) on maternity/parental leave.

(c) Remedy

In the result, the grievances succeed on both grounds argued by the Union. An arbitrator has jurisdiction to remedy a violation of the *Human Rights Code* by granting the benefits (in this case, accrued vacation entitlements) and striking out the offending provisions (here, Article 27.10(c)(2) and (3) of the Collective Agreement). See *Surrey School District No. 36 -and- BCTF*, [2000] BCLRBD No. 367, particularly at paras. 12 and 25-27. The Union urges a similar outcome in this case. It additionally argues that the Grievors be made whole with respect to their Article 15 vacation entitlements and vacation pay for the time that they were on maternity/parental leave.

In the event of an adverse finding, the Employer acknowledges a declaration would be appropriate but says it should be suspended and remitted to the parties "… to address in their current collective bargaining with an arbitral retention of jurisdiction if they are unable to agree". (At the time of the hearing, the parties had met for two days of negotiations and had additional days scheduled over the next two months. The contract was due to expire on March 31, 2026 and I have not been provided with any update.) The Employer's suggested approach "parallels" the approach to remedy which I took in *British Columbia Public School Employers' Assn. -and- BCTF (Supplemental Employment Benefits)*, [2012] BCCAAA No. 138, and in the *Burnaby* award.

As the Employer additionally argues, if the Collective Agreement provisions in issue breach the legislation (as I have now found) "… that is the result of [the parties'] agreement to those provisions in the past, rather than the unilateral imposition by the Employer of unlawful terms [and] the parties should have the opportunity to remedy their unlawful agreement" (submission at para. 8). Referral back to the parties was also viewed in the *City of Vancouver* award as the "preferred option" in most instances for the same reason. The award adopted that approach despite the presence of certain mitigating factors. One of the reasons for remitting the matter to the parties was "a number of interrelated provisions that might be affected and which could be beneficially addressed by the parties which are outside the jurisdiction of the Arbitration Award". The Employer has identified certain Collective Agreement terms which it says fall within this category. On the other hand, there were no individual grievors in the *City of Vancouver* case; thus, no evidence was presented on how they might have been affected. Here, of course, there is detailed evidence about the Grievors' circumstances.

I have therefore decided to grant the relief sought by the Union on behalf of the Grievors. Namely, that they be made whole with respect to their Article 15 vacation entitlement and vacation pay for the time that they were on maternity/parental leave. I have further determined that a declaration should be issued to the effect that Articles 23.10(c)(2) and (3) violate the *Human Rights Code*. However, the declaration of invalidity is being suspended and the issue is remitted to the parties for resolution regardless of whether they have concluded a new Collective Agreement in the interim.

VI. DECISION

For all of the above reasons, the Union's grievances are upheld. The matter is being referred back to the parties to negotiate terms which remedy the discriminatory nature of the disputed provisions. I will remain seized to deal with any issues arising from the interpretation or implementation of the Award, including any failure to agree on non-discriminatory language.

DATED and effective at Vancouver, British Columbia on May 5, 2026.

JOHN B. HALL
Arbitrator