
In the Matter of the Arbitration Between :
Amalgamated Transit Union, Local 1342, Union :
-and - :
Niagara Frontier Transit Metro System, Inc., : **OPINION**
Employer : **AND AWARD**
(Thomas Lloyd, Bereavement Leave) :

BEFORE: Lise Gelernter, Arbitrator¹
HEARING DATE: June 7, 2018

APPEARANCES

For the Union:

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Blitman & King, LLP
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For the Employer:

Wayne R. Gradi, Esq.
Niagara Frontier Transit Metro System, Inc.
181 Ellicott Street
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OVERVIEW OF THE GRIEVANCE

Thomas Lloyd, an employee of Niagara Frontier Metro, Inc. (Employer or NFT) who is a Mechanic A at the Cold Spring body shop, applied for paid bereavement leave on April 17, 2017 when his stepdaughter, Virginia Fagard, passed away due to cancer shortly before her seventeenth birthday. Mr. Lloyd is a member of the bargaining unit represented by the Amalgamated Transit Union, Local 1342 (ATU or Union) and Section 18-10 of the collective

¹By letter dated January 23, 2018, the parties advised me that they had selected me to serve as the arbitrator in this case. The hearing was held on June 7, 2018 in a conference room at the NFT Metro's offices at 181 Ellicott Street, Buffalo, New York. Both parties had a full opportunity to make opening arguments, examine and cross-examine witnesses and introduce evidence. In lieu of closing arguments, the parties agreed to submit closing briefs, which were submitted on or before July 13, 2018.

bargaining agreement (CBA) between the ATU and NFT provides for paid bereavement leave for the deaths of certain family members. NFT denied his request for paid leave because, the Employer stated, Section 18-10 did not provide for paid bereavement leave for stepchildren.

Jt. Ex. 2. The Union grieved the denial and ultimately sought arbitration of the matter. *Id.*

ISSUE TO BE RESOLVED

The parties agreed to have the arbitrator resolve the following issue:

Did the Company violate Sec. 18-10 of the parties' CBA when on or about April 18, 2017, management denied the Grievant bereavement leave claimed on account of the death of his stepchild?

If so, what shall the remedy be?

APPLICABLE CONTRACT LANGUAGE

Section 18-10 of the CBA provides, in relevant part:

Leave of Absence for Death in Immediate Family. In the event of death occurring in a full-time employee's immediate family (i.e. mother, father, mother-in-law, father-in-law, spouse, child, brother or sister of an employee), the employee shall be excused from work for the time necessary and shall be paid at his or her regular rate of pay for the scheduled work-time he or she is required to lose on any of his or her scheduled work-days provided that pay for such time shall not be in excess of three (3) days provided that such time must be taken no later than fifteen (15) days following the date of death. . . . In the event of the death of an employee's grandparent or grandchild the employee shall be excused from work for the time necessary to attend the funeral of such grandparent or grandchild and shall be paid at his or her regular rate of pay for the scheduled work time he or she lost from work on the day of the funeral to attend the funeral.

Jt. Ex. 1, § 18-10, at 188-89 (emphasis added).

EVIDENCE PRESENTED

Thomas Lloyd met Michele Thomas in 2013 and later married her. Mr. Lloyd and Ms.

Thomas (now Lloyd) both came to the marriage with children from previous relationships.

Virginia Fagard was Ms. Lloyd's natural daughter and lived with Mr. and Mrs. Lloyd, along with

the couple's other children. Mr. Lloyd never adopted Virginia, but considered her to be his daughter, treated her the same as his natural children and stepchildren and was one of her constant caregivers after she developed brain cancer in 2015 due to prior treatments she had received for leukemia when she was younger. T-Lloyd.²

Mr. Lloyd testified that Virginia experienced a slow decline in her health during the two years after her diagnosis and that she eventually could not care for herself. Mr. Lloyd took Family Medical Leave Act³ (FMLA) leave to care for her, which included helping with IVs, feeding her, bathing her, and changing diapers. After the family acquired a wheelchair van, he took the family, including Virginia, on outings to go camping and swimming and he installed a handicap lift in the family's pool. Virginia was eligible to be covered by the NFT's health insurance, but since she was eligible for Medicaid after she got sick with leukemia, Mr. Lloyd did not carry her as a dependent on his health insurance. Everyone considered Mr. Lloyd to be Virginia's father, including teachers, other parents, friends, and Virginia herself. T-Lloyd. Her natural father was not a presence in her life, according to Mr. Lloyd.

When Virginia died in April 2017, Mr. Lloyd and the rest of the family were devastated. Mr. Lloyd took care of the funeral arrangements. When he applied on April 17, 2017 for paid bereavement leave as provided in Section 18-10 of the CBA, his supervisor did not think there would be any problem in granting it, but upper management denied it due to the fact that Virginia was his stepchild and Section 18-10 provides for bereavement leave only for "children."

T-Lloyd; Jt. Ex. 2. NFT did offer to allow Mr. Lloyd to use his vacation or personal leave time,

²"T-Lloyd" indicates that Mr. Lloyd's testimony was a source for the information provided. There were no other witnesses at the hearing.

³The Company approved Mr. Lloyd's Family Medical Leave Act (FMLA) request in January 2016. Co. Ex. 1; T-Lloyd.

but Mr. Lloyd declined to do so. Jt. Ex. 2.

THE PARTIES' POSITIONS

The Union argues that the term "child" in Section 18-10 encompasses natural children as well as unadopted stepchildren. The *Elkouri* arbitration treatise and most arbitrators interpret bereavement leave coverage for family members broadly, according to the Union. The key issue is whether the person seeking bereavement leave had a bona fide traditional familial relationship with the deceased. Because Mr. Lloyd had a real father-daughter relationship with Virginia, the Union contends that Section 18-10 entitled him to paid bereavement leave.

The Company argues that an unadopted stepchild is not a "child" covered by the bereavement leave provisions of the CBA. A "child" has been in the list of family members covered by Section 18-10 since the bereavement leave provision was included in the CBA in 1972, Jt. Ex. 3, and the parties have never tried to modify that term, although they agreed on other modifications, such as the more limited leave allowed for grandparents and grandchildren. Moreover, NFT argues, although the New York Court of Appeals has recognized non-biological parents as having parental rights in same-sex relationships, it has only done so when there was a pre-conception agreement for the non-biological parents to raise the children born to their partners as daughters or sons. Mr. Lloyd did not have any type of agreement with Mrs. Lloyd about raising and caring for Virginia. The Company does not doubt Mr. Lloyd had a close relationship with Virginia and that he grieved after her death, but the contract's plain terms do not grant bereavement leave for step-children.

DISCUSSION

The Company is correct that Section 18-10's bereavement leave language does not

mention anything specifically about stepchildren. NFT assumes that it covers only natural and adopted children, but there is nothing in the language of the contract that excludes stepchildren. “Child” is actually a very general and ambiguous term, much like the term “son or daughter,” which appears in the FMLA. 29 U.S.C. § 2612(a) (2018). For the FMLA, Congress provided a definition due to the ambiguity and defined “son or daughter” to be “a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.” 29 U.S.C. § 2611(12) (2018). The CBA does not define the term “child,” so the FMLA definition of a similar term can be instructive. Much like the bereavement leave provision of the CBA, the FMLA covers leaves for only close family members. The FMLA’s definition of “son or daughter” indicates that not only biological children are “children” for whom a parent would have a close enough relationship to lead to the need to take FMLA or bereavement leave.

Since the term “child” is ambiguous, looking for the “plain meaning” of the term is not of much use. When there is an ambiguous contract term, an arbitrator can look to the parties’ bargaining history or their past practices to determine what the parties meant when they wrote the contract. Kenneth May, ed., *Elkouri & Elkouri, How Arbitration Works*, 9-26 - 9-27, 9-33 - 9-34 (8th ed. 2016). In this case, however, there was neither bargaining history nor a past practice concerning foster children, stepchildren or adoptive children under Section 18-10.

Arbitral doctrine can be a guide when there is no more direct source for interpreting the contract. The *Elkouri* arbitration treatise states that “usually a somewhat broader interpretation is given to that portion of the funeral leave clause that identifies the family members or relatives for whose funeral the leave is allowed.” *Elkouri* at 17-66. In its brief, the Union discussed several cases where a step-parent or a step-sibling relationship qualified an employee for bereavement

leave even though the contracts at issue did not mention step-relationships and used the terms “mother,” “father,” “brother,” or “sister.” *Alfred M. Lewis*, 62 Lab. Arb. 447 (Petrie, 1974); *Foremost Dairies, Inc.*, 43 Lab. Arb. 616 (Greenwald, 1964); *St. Louis Flour Mills*, 31 Lab. Arb. 603 (Klamon, 1958); *Sylvania Elec. Products, Inc.*, 26 Lab. Arb. 108 (Shister, 1956). Since all of those cases either pre-date the 1972 addition of the bereavement leave provision in the contract at issue, or are relatively contemporaneous, this consensus indicates that the concept of step-relationships being included within the more general terms of “mother,” “father,” “sister,” “brother” or “child” was consistent with societal norms at the time. Based on this arbitral consensus and because the contract uses the broad term “child,” and does not exclude stepchildren from that term, the term “child” in Section 18-10 covers stepchildren.

However, not all “step” relationships qualify for bereavement leave. Because the contract requires that the deceased be a parent, parent-in-law, spouse, sibling or child, the parties have clearly limited the covered relationships to those that fit within those broad terms – those involving bona fide parent-child, spousal or sibling relationships. *See Ashley Comm. Schs.*, 89 Lab. Arb. 1285 (McDonald, 1987); *Houdaille Indus., Inc.*, 69 Lab. Arb. 1080 (Hunter, Jr. 1977). It is clear from the facts of this case that Mr. Lloyd had a real parental relationship with Virginia; she lived with him, he helped raise her, cared for her during her illness, taking off time from work to do so, and treated her as he did all the other children in his family, natural children and stepchildren alike. Teachers, friends, family members, and Virginia regarded Mr. Lloyd as having a father-daughter relationship with her. The Company does not dispute the nature of the relationship Mr. Lloyd had with Virginia. The evidence shows that Mr. Lloyd therefore had a bona fide parent-child relationship with Virginia and was entitled to paid bereavement leave

when she passed away, pursuant to Section 18-10.

Since the nature of the relationship at issue in this case was so clear, outlining the limits of what qualifies as a “bona fide” familial relationship is not necessary at this time. However, the fact that the contract can cover “step” relationships does not open the floodgates to entitlement to bereavement leave. An employee seeking leave for the death of a stepchild, step-sibling or stepparent will have to be prepared to show that he or she had the type of close relationship with the deceased that was a true parent-child or sibling relationship.

AWARD

The grievance is granted. The Company violated Section 18-10 of the CBA when it denied Mr. Lloyd’s April 17, 2017 request for paid bereavement leave after the death of his stepdaughter. Section 18-10’s reference to “child” can include stepchildren as long as the employee has a bona fide parental relationship with the child.

Amherst, New York
August 6, 2018


Lise Gelernter, Arbitrator

Acknowledgment and affirmation

I, Lise Gelernter, do hereby affirm upon my oath as an arbitrator that I am the individual described in and who executed the foregoing instrument, which is my Award, which was issued on August 6, 2018.

Amherst, New York


Lise Gelernter, Arbitrator

APPENDIX

WITNESSES

For the Union:

Thomas Lloyd Grievant

EXHIBITS

Joint Exhibit 1	Collective bargaining agreement
Joint Exhibit 2	Grievance package
Joint Exhibit 3	Collective bargaining agreement, 1972 (excerpt)
Joint Exhibit 4	Obituary, Victoria Fagard
Union Exhibit 1	T. Lloyd's request for bereavement leave, 4/17/17
Company Exhibit 1	T. Lloyd's application for FMLA leave, 1/18/16