



Article: XI

Tab No.: 11

Subject: STATUTORY HOLIDAYS

Page 1 of 13

Text:

ARTICLE XI – STATUTORY HOLIDAYS

Section 1:

- a) All hourly-rated employees who work on New Year's Day, Family Day, Good Friday, Victoria Day, Dominion Day, British Columbia Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, and Boxing Day shall be paid rate and one-half for all hours worked.
- b) In the event one of the statutory holidays falls on a Sunday, the previous Friday or the following Monday shall be observed as the Holiday. In the event that one of the within named statutory holidays fall on Saturday, it shall be observed the preceding Friday or succeeding Monday as agreed between the Company and the Plant Committee.
- c) In the event of a Statutory Holiday falling on a Tuesday, Wednesday or Thursday, and where the Company and Plant Committee mutually agree, the said holiday may be observed the preceding Monday or following Friday respectively.
- d) At the option of the Company, but whenever possible, by mutual agreement with the Plant Committee, either Good Friday or Easter Monday shall become the designated Easter Holiday and the Company shall notify its employees of the designation at least one (1) week prior to the said Holiday.
- e) When a Statutory Holiday falls on a Friday, employees working on a Tuesday to Saturday work week, by mutual agreement between the Company and the Plant Committee may work on the Friday Statutory Holiday at the straight time job rates and substitute Saturday as the Statutory Holiday.
- f) In the case of a maintenance employee where one of the statutory holidays is observed on his/her rest day, he/she shall have a day off without pay in lieu thereof at a mutually agreeable time.
- g) Notwithstanding the above, in logging, a Statutory Holiday may be observed on another mutually agreed upon day in a week other than the week in which it occurs. An employee who qualifies for such Statutory Holiday on the day it occurs, and works on that day, will be paid for the Statutory Holiday at straight time rates.

Guidelines:

ARTICLE XI – STATUTORY HOLIDAYS

Section 1:

Sub-section a) defines the 11 designated statutory holidays under the Collective Agreement and specifies that any hourly rated employee who actually works on one of the designated statutory holidays is paid rate and one half (1 ½ x) for all hours worked.



Article: XI

Tab No.: 11

Subject: **STATUTORY HOLIDAYS**

Page 2 of 13

Subsections b), c) and d) allow for some flexibility to observe a statutory holiday on a different day of the week than it occurs. It is advisable to plan well in advance for statutory holidays. Each Subsection calls for agreement with the plant committee. Therefore, it is advisable to review statutory holiday scheduling with the plant committee in an effort to reach consensus, preferably early in the calendar year. It must be emphasized that this section was negotiated in the context of a 5-day x 8 hour/day work schedule as completed under Article VII, Section 1 and 2. **The Statutory Holiday particulars applicable under “Alternate Shift Schedules” provided under Article VII (Hours of Work and Overtime), Section 4 a) are addressed in that Section specifically. Regarding “negotiated” alternate shift schedules under Article VII, Section 4 b) the Statutory Holiday particulars should be contained in the associated negotiated Alternate Shift Agreement.**

With respect to sub-section d); ultimately, management can schedule the holiday if no agreement is reached. This language does not grant power to the Union to “veto” the scheduled holiday. However, management must act reasonably and in good faith in scheduling the holiday.

Subsection e) applies on a crew wide basis, as opposed to an individual basis; the company and the plant committee can agree that the entire Tuesday to Saturday crew will work the Friday and substitute Saturday as the statutory holiday.

Subsection f) Example:

- Employee is a Tuesday to Saturday maintenance employee
- Statutory holiday is on a Monday; scheduled rest day
- Employee shall have day off without pay in lieu, at a mutually agreeable time



Article: XI

Tab No.: 11

Subject: **STATUTORY HOLIDAYS**

Page 3 of 13

Subsection g) allows for even more flexibility in the observing of a Statutory Holiday specific to logging. This is not very prevalent to current CONIFER member companies. Any specific questions may be directed to staff at CONIFER.



Article: XI

Tab No.: 11

Subject: **STATUTORY HOLIDAYS**

Page 4 of 13

Text:

ARTICLE XI - STATUTORY HOLIDAYS

Section 2:

- a) All hourly-rated and piece work employees who qualify for the paid holiday under the conditions set out below shall be paid for the holiday at their regular job rate of pay for the regular work schedule. The Parties hereto agree that the paid statutory holidays shall be as follows:

New Year's Day, Family Day, Good Friday, Victoria Day, Dominion Day, British Columbia Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day

- b) Piece-work employees shall receive pay for the statutory holidays for which they qualify, based on the daily average earnings for the days actually worked during the previous thirty (30) working days.
- c) All hourly-rated employees working on a paid holiday shall receive rate and one-half for hours worked on such day in addition to the holiday pay to which he/she may be entitled.
- d) Cook and bunkhouse employees who work on a Statutory Holiday shall receive at the end of their regular work schedule, an additional day off with pay to be added to their leave and vacation allowance accumulated in accordance with Article VII, Section 3.
- e) To qualify for statutory holidays, an employee must have been on the Company payroll for the thirty (30) calendar days immediately preceding the Statutory Holiday and must have worked his/her last regularly scheduled work day before, and his/her first regularly scheduled work day after the holiday, unless his/her absence is due to a compensable injury or illness, which occurred within six (6) months of the holiday, or the employee is on authorized leave of absence in accordance with Section 2 or 3 of Article IX.
- f) In the case of illness or injury, the Company shall have the right to request a certificate from a qualified medical practitioner.
- g) Notwithstanding any of the foregoing provisions, the employee must have worked one (1) day before and one (1) day after the holiday, both of which must fall within a period of ninety (90) calendar days.



Article: XI

Tab No.: 11

Subject: **STATUTORY HOLIDAYS**

Page 5 of 13

Guidelines

ARTICLE XI - STATUTORY HOLIDAYS

Section 2:

Subsection 2 a) obligates the employer to pay qualifying (i.e. eligible) employees statutory holiday pay for the designated holidays on the basis of their regular job rate of pay for their regular work schedule. This calculation includes any premium rates, bonus, and regularly scheduled overtime that are part of an employee's regular schedule. (*See Case Reference #1*). Employers are strongly encouraged to contact the staff at CONIFER should any questions arise as to the particulars involved in statutory holiday pay calculation.

The employee should be paid statutory holiday pay based on what he would have earned had he worked. The "regular job" implies that there must be some regularity or some permanence to the relevant assignment.

Not all the jurisprudence is consistent with respect to the question of whether an element of overtime pay (OT) is to be paid as part of statutory holiday pay. This question was at the core of an arbitration case between Carrier Lumber and USW Local 1-424 (Decision September 23, 2014). The case is quite factually specific, given Carrier negotiates their collective agreement on their own directly with Local 1-2017. In this case the arbitrator ruled that OT was not to be included in statutory holiday pay (*see case reference #2*).

Where an employee is laid off prior to a statutory holiday, he/she will be paid, subject to qualifying conditions, based on the regular job he/she held prior to the statutory holiday. If the employee bumped to another job PRIOR to the statutory holiday, then he/she would be paid based on the job he/she bumped to, as opposed to the job he/she held prior to the application of seniority (bumping).

Subsection b) stipulates that piece work employees shall receive the daily average earnings of the previous 30 working days.



Article: XI

Tab No.: 11

Subject: **STATUTORY HOLIDAYS**

Page 6 of 13

Subsection c) reinforces the content of Section 1 a); that any hourly rated employees working on a statutory holiday will receive rate and one half for hours worked, in addition to statutory holiday pay eligibility. (*See Case Reference #3*).

Subsection d). There are currently no cook or bunkhouse employees within CONIFER member companies.

Subsection e) is quite important to the overall administration of statutory holiday entitlement as it clearly spells out the qualifying criteria for eligibility:

- individual must be on payroll for 30 calendar days preceding the statutory holiday
- Must have worked his/her last regularly scheduled workday before and his/her first regularly scheduled work day after the holiday.
 - Unless absence due to compensable injury or illness
 - On authorized leave of absence as per Article IX.

Although relatively straight forward, this sub-section has generated considerable arbitral activity, which serves to clarify its application.

Where an employee, through some culpable behaviour, such as an illegal work stoppage, or leaving early on an unauthorized basis, fails to complete his/her day before or day after, forfeits the right to statutory holiday pay. (*See Case Reference #4*).

Traditionally when a disciplinary suspension was applied to a qualifying day before or day after it was considered to disentitle an employee to the corresponding statutory holiday pay. However, employers are cautioned to give some consideration to the disentanglement to statutory holiday pay in determining the appropriateness of the discipline relative to the act warranting discipline.



Article: XI

Tab No.: 11

Subject: **STATUTORY HOLIDAYS**

Page 7 of 13

However, it need not be 'directly' factored in. The consideration should not be to the extent to effectively equate the loss of stat pay as akin to an additional suspension day. Also, the decision to forfeit the statutory holiday pay for failure to meet the qualifying criteria due to disciplinary action should be expressly communicated to the employee, and not left as a moot point to be discovered by the employee at a later date. An arbitration between West Fraser (Quesnel Plywood) and USW Local 1-424 (September 17, 2013) served to somewhat realign the jurisprudence with the traditional view noted above. (*See case reference #5*)

Arbitral jurisprudence regarding sub-section e) has led to the development and application of the "doctrine of substantial compliance". This doctrine is based on the notion that the rationale for the qualifying days language is to prevent absenteeism at a time when the company is particularly vulnerable. As a general rule, so long as an employee substantially complies with the qualification such that the purpose of the qualification is not violated, then the earned benefit, statutory holiday pay, must be paid. "Substantial compliance" is applicable to a scenario where a full shift before or after is shortened through no fault of the employee. Examples would include where an employee becomes ill, is injured, or requests a leave of absence due to an urgent matter. Token attendance is not sufficient, but where an employee starts work on a qualifying (for statutory holiday purposes) shift and substantially complies with fulfilling the shift, then he qualifies for statutory holiday pay. (*See Case Reference #6*)

Subsection f) grants the right to the Company to request a medical certificate to validate an absence for illness or injury. The date of the medical documentation must coincide with the date of the absence, as opposed to "after the fact". Retro-active medical validation of an absence due to injury/illness on a statutory holiday qualifying day is generally not acceptable.

Subsection g) provides that regardless of all other qualifying criteria being met, an employee must have worked one day before and one day after the holiday, both of which must fall within 90 calendar days. Therefore, statutory holidays which fall during an employee absence should not be paid until such time as the employee returns to work within 90 days, pending other criteria being met. Also, the



Article: XI

Tab No.: 11

Subject: **STATUTORY HOLIDAYS**

Page 8 of 13

payment of a statutory holiday day from another source, such as WCB, while an employee is absent, thereby ends entitlement to statutory pay from the company upon return to work. The CONIFER Benefit Plan Administration Manual addresses the issues of statutory holiday pay during a WI claim.



Article: XI

Tab No.: 11

Subject: **STATUTORY HOLIDAYS**

Page 9 of 13

Case References – Article XI, Statutory Holidays, Section 2:

1. NORTH CARIBOO FOREST LABOUR RELATIONS ASSOCIATION AND IWA, 1-424
Arbitrator: H. Allan Hope, April 26, 1982 (AR 6/82)
[Click here to read this case reference](#)

CONCLUSION: In this interpretation case, the question posed to the arbitrator was, “What premiums contained in the Collective Agreement are to be recognized in the calculation of statutory holiday pay”? The conclusion was that employees who receive premium rates as part of their regular pay while working their regular schedule are entitled to have those premiums included in the calculation of their statutory holiday pay entitlement.

2. CARRIER LUMBER LTD. AND USW LOCAL 1-424
Arbitrator: Christopher Sullivan, September 23, 2014.
[Click here to read this case reference](#)

Union grievance concerning overtime pay in calculation of Statutory Holidays.

CONCLUSION: “The CONIFER Contract Administration Manual’s statement on the issue in dispute in the present case cannot be accepted of evidence of mutual intention that overtime is to be included in the calculation of statutory holiday pay for the parties in these proceedings, particularly as it was based on an arbitration decision that did not consider that issue. In the circumstances, the express Collective Agreement language is clear and unequivocal on its face to the effect that overtime performed by hourly-rated employees is not to be included in the calculation of statutory holiday pay. The grievance must therefore be denied.”



Article: XI

Tab No.: 11

Subject: **STATUTORY HOLIDAYS**

Page 10 of 13

3. INTERIOR FOREST LABOUR RELATIONS ASSOCIATION AND IWA LOCALS 1-405, 1-417, 1-423

Interpreter: Thomas R. Berger, February 19, 1986 (AR 3/86)

[Click here to read this case reference](#)

CONCLUSION: The interpreter addressed several questions in this decision. The questions relevant to statutory holiday provisions were two-fold: (1) “Is a casual employee who works on a statutory holiday entitled to rate and one-half”? The parties agreed the answer is yes. (2) Is slightly more complex, “Is a casual employee working with tradesmen on Friday in circumstances in which Friday is a day on which a holiday has been agreed to be observed between the Company and the Shop Committee pursuant to Article XIII 1 c) or 1 d), entitled to rate and one half for all hours worked on that day”? The answer to the question was yes.

4. FINLAY FOREST INDUSTRIES LTD. AND IWA LOCAL 1-424

Arbitrator: Vincent L. Ready, July 23, 1986 (AR 4/86)

[Click here to read this case reference](#)

CONCLUSION: This case involved the qualifying language for statutory holiday pay entitlement, known as the “day before, day after” criteria. Employees who participated in an illegal work stoppage on the day prior to a long weekend, as well as the day following the statutory holiday were deemed to be not entitled to their statutory holiday pay.

5. QUESNEL PLYWOOD (A DIVISION OF WEST FRASER MILLS LTD.) AND USW LOCAL 1-405. Arbitrator: Christopher Sullivan, September 17, 2013.

[Click here to read this case reference](#)

CONCLUSION: This case involved an employee who engaged in behavior that resulted in an employee being sent home during his shift (pending discipline). The employee went on vacation the next week and then returned to work when he was promptly subject to a one-day disciplinary suspension, the day after a statutory holiday. The employer took the view this disentitled the employee to stat pay in accordance with the collective agreement qualifying



Article: XI

Tab No.: 11

Subject: **STATUTORY HOLIDAYS**

Page 11 of 13

language. The arbitrator agreed, and stated, “The prevailing arbitral approach supports a conclusion that the grievor’s loss of statutory holiday pay in the present case is not a result of an act of discipline, but rather is due to the application of the clear Collective Agreement language. There is no suggestion the Company acted improperly in any way in determining the day the suspension, which barred him from meeting the express conditions, was to be served.”

6. WESTAR TIMBER LIMITED (CELGAR LUMBER) AND IWA LOCAL 1-405

Arbitrator: Donald Munroe, July 16, 1984

[Click here to read this case reference](#)

CONCLUSION: This case involved six millwrights who were told there was no more work for them after they refused to open steam valves, serviced by lines from the adjacent pulp mill, which was subject to a labour dispute. The millwrights did not complete the last three hours of their shift, and were denied payment of the statutory holiday.

The arbitrator applied the doctrine of substantial compliance and concluded that the millwrights did not fail to comply with the qualifying conditions for statutory holiday pay.



Article: XI

Tab No.: 11

Subject: **STATUTORY HOLIDAYS**

Page 12 of 13

Text:

ARTICLE XI - STATUTORY HOLIDAYS

Section 3: Personal Floating Holiday

This section becomes effective September 1st, 1978. This Personal Floating Holiday is in lieu of the proposed Heritage Day, but this section shall come into operation on its effective date even if Heritage Day has or has not been proclaimed.

- a) Personal Floating Holiday
Regular full-time employees will be granted one (1) Personal Floating Holiday during each contract year of this Agreement, to be arranged at a time suitable to the Employee and the Company, so that there will be no loss of production.

- b) Qualifying Conditions
When the Personal Floating Holiday is taken, an employee shall be paid for the said Holiday at his/her regular job rate of pay for his/her regular work schedule, subject to the following conditions:
 - i) A new employee must have been on the payroll for not less than ninety (90) consecutive calendar days to qualify for the Personal Floating Holiday. When an employee has been on the payroll for not less than (90) consecutive calendar days and terminates for whatever reason, and he has not previously taken his personal floating holiday then he shall be paid his personal floating holiday. The parties further agree that payment of the personal floating holiday upon termination shall not be construed as an extension of his period of employment.
 - ii) An employee will not qualify for the Personal Floating Holiday if on leave of absence for more than nine (9) months in the contract year, except in the case of sickness or injury.
 - iii) An employee shall apply on an approved form, at least seven (7) days in advance, for his/her Personal Floating Holiday. The employee shall receive notice of the disposition of his/her request a minimum seventy-two (72) hours prior to the requested Personal Floating Holiday.
 - iv) If an employee is required to work on his/her Personal Floating Holiday after a definite date has been designated for such holiday, the employee shall be paid overtime for such work at the rate of time and one-half. The employee will then be entitled to take the holiday with pay at a later date to be mutually agreed upon.
 - v) Personal Floating Holiday not taken or scheduled by April 30th of each contract year will be scheduled by management.
 - vi) A Personal Floating Holiday shall not be scheduled on an employee's regular rest day.
 - vii) Where an employee chooses Saturday or Sunday as a Personal Floating Holiday straight time rates will apply.
 - viii) The parties agree that a regular, full-time employee, when taking his Personal Floating Holiday as provided for under this Article, must have worked his last regularly scheduled work day before, and his first regularly scheduled work day after the holiday, unless his absence is due to illness or an occupational injury, or the employee is on authorized leave of absence.



Article: XI

Tab No.: 11

Subject: STATUTORY HOLIDAYS

Page 13 of 13

Guidelines:

ARTICLE XI - STATUTORY HOLIDAYS

Section 3: Personal Floating Holiday

As prescribed by sub-section a), regular, full time employees are entitled to a personal floating holiday once during each contract year. The scheduling of an individual "floater" is to be at a time suitable to both the Company and the Employee so that production is not adversely impacted.

To be granted a "floater", employees must meet the qualifying conditions spelled out in sub-section b). These are straight forward and easy to apply. It should be stressed that there is a clear onus on management to ensure that floaters not taken by April 30th are scheduled by the company by the end of the contract year.

Payment of a personal floating holiday is on the same basis as statutory holiday pay; "at his/her regular job rate for his/her regular work schedule", meaning what the employee would have earned had he/she worked that day.

Similar to statutory holidays, the employee must meet the day before/day after qualifier. Failure to substantially comply with this criterion results in forfeit of pay for the floater and the floater is deemed to be utilized.

Upon termination, an employee is entitled to their outstanding personal floating holiday pay if it has not been taken, however, this does not result in an extension of the termination date. It is advised that the company ensure that they have an accurate system to track entitlement and when floaters are taken.