# [Do Floater Holidays Make Up for Restrictions on Employment Standards Holiday Pay Entitlements?]

Employment standards laws require you to pay employees for certain public holidays such as Christmas and Canada Day, including time-and-a-half for holiday hours worked. While not required by law, some employers also give employees floating holidays during the year. Do these floating holidays give you room to restrict employees' paid public holiday entitlements? The employer could argue that they do, provided that the overall holiday pay package is at least as favourable as the employment standards minimums. But employees might claim that comparing paid public holidays to floater holidays is apples to oranges. Which side is right? Here are two cases in which a labour arbitrator had to make this judgment in the context of a union grievance.

## Floater Holidays Count Toward Public Holiday Pay Allotment

In this case an employer was allowed to use floaters to offset restrictions to employment standards holiday pay entitlements.

### Situation

Back when the *Canada Labour Code* ("Code") gave employees nine paid holidays per year, a federally regulated employer inserted a provision into the collective agreement requiring employees to work their last scheduled shift before and first scheduled shift after each holiday to get paid for it. This requirement isn't in the Code. So, the union claimed that the collective agreement was less favourable. The employer disagreed, noting that employees also got two floater days. The union argued that floaters were different from public holidays and shouldn't figure into the comparison.

### Ruling

The federal arbitrator ruled that the collective agreement's holiday pay terms were at least as favourable as the Code.

### Reasoning

Although there were some minor differences between the floaters and paid public holidays in terms of scheduling, they were essentially of the same "character," including the same pay. The clear intent of the floaters, the arbitrator reasoned, was "to enhance the basic holiday benefit provided by the Code." And once the floaters were added to the package, the holiday pay package of the collective agreement was actually more favourable to employees than the Code requirements.

*ICS Courier v. Communications, Energy and Paperworkers Union of Canada, Local 333*, 2007 CanLII 56475 (CA LA)

## Floater Holidays Don't Count Toward Public Holiday Pay Allotment

Here's a similar case but with slightly different floater holiday pay terms and thus a different outcome.

### Situation

A collective agreement gave zoo communications officers the eight paid holidays then required by the Ontario *Employment Standards Act* (ESA), plus three additional scheduled holidays and two floater holidays. The 11 scheduled holidays were paid at regular wages for eight hours per day. The employer acknowledged that the 88 hours of pay provided for the 11 scheduled holidays was below the then ESA minimum of 92 hours. However, it argued that the two floater holidays brought total paid holiday hours to 104. The union claimed the floaters shouldn't count.

### Ruling

The Ontario arbitrator ruled that the floating holidays didn't count, meaning that the collective agreement holiday pay package was below the ESA minimum.

### Reasoning

Unlike the floating holidays in *ICS*, the floaters in this case weren't of the same essential character as the paid public holidays. The floaters were provided for under a separate part of the collective agreement and subject to different terms from paid public holidays, the arbitrator. For example, unlike public holidays, floating holidays could be lost if employees didn't use them by the end of the year. Consequently, the arbitrator refused to consider floating holidays in the comparison between the collective agreement and ESA.

*Toronto Zoo and CUPE, Local 1600 (Re)*, 2001 CanLII 62130 (ON LA)