

IN THE MATTER OF AN ARBITRATION
UNDER THE *LABOUR RELATIONS ACT*, 1995

Between:

THE CORPORATION OF THE CITY OF MISSISSAUGA

(Employer)

-and-

AMALGAMATED TRANSIT UNION, LOCAL 1572

(Union)

-and-

JOHN REIS

(Grievor)

Re: DISCIPLINE GRIEVANCE

SOLE ARBITRATOR:

Yasmeena Mohamed

APPEARANCES:

FOR THE EMPLOYER:

Jeffrey D. A. Murray, Counsel

FOR THE UNION:

Cynthia D. Watson, Counsel

HEARING DATE:

February 7, 2011

INTERIM DECISION DATE:

February 7, 2011

INTERIM AWARD

This hearing was convened pursuant to the *Labour Relations Act*, 1995. The parties have consented to my jurisdiction to hear this matter.

Prior to the commencement of the hearing, the Union requested an adjournment of the hearing on the grounds that the Grievor was medically unfit and therefore, unable to fully participate in the hearing. The Union tendered a medical note from the St. Joseph's Health Centre, Toronto, as evidence to substantiate its request for an adjournment.

The Employer objected to the Union's request for an adjournment of the hearing, on the grounds that the medical note tendered by the Union referred specifically to the Grievor's inability to attend at work for medical reasons. The Employer submitted that the medical note did not certify the Grievor's inability to participate at the hearing for medical reasons. The Employer further submitted that the issue of whether the Grievor was unable to attend at work, and whether the Grievor's was unable to fully participate at a hearing, were different and that the two issues not be confused.

Having heard the submissions of the parties, I have granted the adjournment request. My reasons are as follows:

1. It is well recognized and established jurisprudence that tribunals have a duty to provide a fair and just process. This duty translates to providing each party an opportunity to be fully heard and to provide a full case. Failure to provide any party the opportunity to be fully heard is a serious breach of procedural fairness and natural justice.
2. The grievance before me is a discipline grievance. If upheld, the grievance may potentially have serious employment consequences for the Grievor. Accordingly, the Grievor must be afforded the opportunity to be fully heard and to be able to participate in the defence of his employment at the hearing. A serious breach of natural justice and procedural justice would result if the Grievor, under these set of circumstances, were to be deprived the opportunity to be fully heard and to be able to participate at the hearing.
3. Adjournments requests are generally granted unless there are very compelling reasons to refuse them. The Union tendered a medical note to substantiate its position that the Grievor was medically unfit to participate at the hearing. The Employer contends that there is a difference between the inability to work for medical reasons and the inability to participate in a hearing absent any medical reasons. I do not agree with the Employer that there is a difference. The medical note tendered by the Union confirmed that the Grievor was medically unfit on the day of the hearing. It is therefore quite logical that if the Grievor is

medically unfit to work that he is also medical unfit to participate at a hearing. The absence of a full diagnosis on the medical note and specific reference to being medically unfit for work only, does not provide me with compelling reasons to conclude that the Grievor is fit to participate fully at a hearing. The medical note, on its face, substantiates the Grievor's inability to fully participate at the hearing on the date in question. The Employer has therefore not provided me with compelling reasons to refuse the adjournment request.

The aforementioned reasons to grant the adjournment request is based on the respective submissions of the parties. I do not base my decision on Arbitrator Sheen's preliminary decision, as read out by Union's counsel. I agree with the Employer that Arbitrator Sheen's preliminary decision cannot be relied upon by me absent submissions and details of the facts and evidence upon which Arbitrator Sheen's decision was relied upon.

Decision:

The adjournment request is hereby upheld. The Parties will notify me in due course with respect to their available dates for the rescheduling of this matter.

Dated this 7th day of February, 2011 in the City of Mississauga

Yasmeena Mohamed

Yasmeena Mohamed, Sole Arbitrator