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In the matter of an arbitration under the *Labour Relations Act*, 1995

Between:

**CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 2280**

(the "Union")

And:

**ST. JOSEPH'S AT FLEMING LONG TERM CARE CENTRE**

(the "Employer")

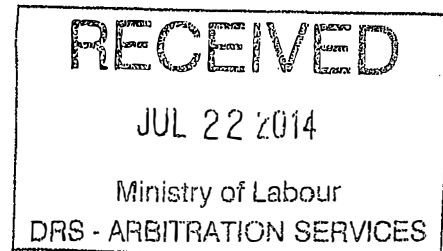
**AND IN THE MATTER OF THE GRIEVANCE OF PLATO MENDOZA, CUPE FILE NO.  
PM-01-13**

SOLE ARBITRATOR: JAMES K. HAYES

APPEARANCES:

For the Employer: Kimberly D. Pepper

For the Union: Alison Davidson



AWARD

The Employer is a long term care facility licensed by the Ministry of Health and Long Term Care. The Grievor is a full-time Personal Support Worker, having 18 years of seniority.

The Grievor was discharged for cause on May 22, 2013. The discharge was as a result of certain video surveillance which was captured in resident's room which showed the

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Grievor wiping and then blowing his nose on a blanket which the Grievor was placing on the resident's bed as he changed the bed.

The Grievor filed a grievance with respect to his discharge, bearing CUPE File Number PM-01-13 challenging his dismissal. The Grievance seeks reinstatement and monetary compensation for the period between the date of discharge and the date of reinstatement.

Having heard the submissions of the parties, I conclude that while the Grievor's conduct was serious and unacceptable, the discharge was not reasonable in the circumstances.

Accordingly, I hereby order the following:

1. The Grievor is to be reinstated to his position as a full-time Personal Support Worker effective March 1, 2014. The reinstatement shall be without any back pay for the period between May 22, 2013 and March 1, 2014.
2. The letter of discharge dated May 22, 2013 shall be removed from the Grievor's file, and shall not be referred to in the future. A letter imposing a five day suspension shall be substituted for the discharge.
3. The implementation of the Grievor's reinstatement, including service and seniority accumulation shall be negotiated by the parties.

I will remain seized to deal with matters of implementation of this award.

  
DATED AT PETERBOROUGH, ONTARIO, this 13<sup>th</sup> day of February, 2014.