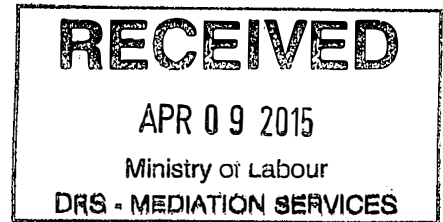


IN THE MATTER OF AN ARBITRATION

Between:



HEALTH SCIENCES NORTH

(the "Hospital")

- and -

THE CANADIAN UNION OF PUBLIC EMPLOYEES, Local 1623

(the "Union")

and in the matter of the discharge grievance of Lyne Lavallee (CS 2015-155)

Russell Goodfellow – Sole Arbitrator

APPEARANCES FOR THE HOSPITAL:

David Chondon, counsel
Diane Barbeau
Lisa Zeman

APPEARANCES FOR THE UNION:

Amanda Montague-Reinholdt, counsel
Sharon Richer
Lisa Morrisette
Frank Lapensee
Lyne Lavallee

File ID: 838186
Folder ID: 10005-RR-15
Ref ID: 5982

A hearing was held in this matter on March 12, 2015.

AWARD

This is a discharge grievance.

The grievor is an RPN. The Hospital is the largest health care provider in Northern Ontario.

In December 2014, the grievor engaged in a very serious form of misconduct. She took a very compromising photograph of an elderly patient. The photograph was discovered approximately one month later by a co-worker, to whom the grievor was showing other photographs, as the co-worker scrolled through images on the grievor's phone. The co-worker immediately suggested to the grievor that she delete the photograph and the grievor did so, promptly. The co-worker then reported the photograph to the Hospital. An investigation ensued, resulting in the termination of the grievor's employment.

The matter also was reported to the Hospital's Privacy Officer, who, in turn, informed the patient's Substitute Decision Maker. The SDM was, to say the least, extremely upset. Among the stated concerns of the SDM, which were also at the forefront of the Hospital's thinking, was that the Hospital is essentially the sole provider of the kinds of services required by the patient in this part of the province. Patients have no ready alternative. For this and other reasons, privacy is of paramount concern to the Hospital and there is no question that the grievor breached the patient's privacy.

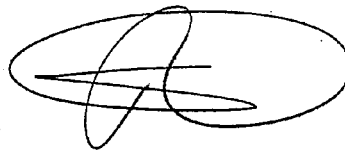
Having said that, it also appears that the grievor was otherwise a good RPN, with 12 years of service and no history of discipline or any behaviour of this type. The taking of the photograph by the grievor on her cell phone appears to have been a momentary aberration and, as the grievor herself acknowledged in a letter to the Hospital, an exercise in extremely bad judgment for which she is profoundly sorry. There is no evidence that the photograph was shown by the grievor to anyone else, with the co-worker only having seen it by chance. The grievor had forgotten about its existence. The grievor immediately acknowledged her wrongdoing and cooperated in the Hospital's investigation.

Thus, while the Hospital can in no sense be faulted for the decision to terminate the grievor's employment, I am persuaded that there are sufficient mitigating factors to warrant reinstatement. Those include not just what has been described above but also the fact that, at the time, the grievor was experiencing extreme stress in her personal life that had caused her to miss five weeks of work from which she had only just, and perhaps prematurely, returned. The grievor was not herself. The incident was out of character. I am confident that, especially with this experience, the grievor would be extremely unlikely to ever commit any other such offence in the future.

The discharge is accordingly rescinded. The grievor is to be returned to employment, in her former "line" on the current schedule, within 30 days of today's date. The time between the date of the discharge and the date of the grievor's return shall be treated as a suspension, for which there shall be no compensation.

I will remain seized with respect to implementation.

DATED at Toronto this 17th day of March 2015.

A handwritten signature in black ink, consisting of a large, stylized capital 'R' followed by a capital 'G' and a capital 'F' intertwined, all enclosed within a large, horizontal oval.

Russell Goodfellow – Arbitrator