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IN THE MATTER OF AN ARBITRATION

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APR 13 2015

Ministry of Labour
DPS - ARBITRATION SERVICES

BETWEEN

Ontario Nurses' Association

(the "Union")

and

William Osler Health System

(the "Hospital")

July 29 and July 31, 2013 Grievances

SOLE ARBITRATOR: James Hayes

APPEARANCES

For the Union:

John D'Orsay, Counsel
Sandra Beardsley
Erica Greaves
Sandra Smout
Elizabeth Simmons

For the Hospital:

Robert Weir, Counsel
Vin Berman
Kelly Falzon
John Cox

For Dr. Persad:

Tracey Tremayne-Lloyd, Counsel
Barbara Prikrylova, Counsel

A prehearing conference was held on March 31, 2015

INTERIM AWARD

1. Union and group grievances both raise allegations of misconduct by Dr. Vidia Persad, a physician who works in the Labour and Delivery Department of the Hospital. *Inter alia* the grievances allege that the Hospital has failed to provide a safe work environment and that various forms of relief should flow.
2. This Award records agreements reached on consent during a case management conference held on March 31, 2015.

Standing of Dr. Persad

3. It was agreed that Dr. Persad was entitled to standing and the right to fully participate in the proceedings throughout.
4. It was agreed that a prior decision of Arbitrator Christopher Albertyn dated November 14, 2013, in a case involving *Dr. G*, should govern in this matter. That is, as stated at paragraph 18 of *Dr. G*, all parties accept that the Health Professionals Appeal and Review Board has exclusive jurisdiction over physician privileges at public hospitals and that a labour arbitrator has no jurisdiction over that question. The parties also accept paragraphs 19 and 20 of *Dr. G* where Arbitrator Albertyn explains what the remedial jurisdiction of a labour arbitrator might generally entail should grievances of this kind be sustained.

Agreement between Dr. Persad and the Hospital

5. An Agreement dated April 30, 2014 was produced to the Union on consent.
6. Production of the Agreement [and documents related thereto] was made to the Union subject to the Undertaking of counsel as set out in his correspondence dated December 23, 2014:

We accept that there should be suitable limitations to the use and distribution of the documents: i.e. They should be provided to me and maintained by me in my custody. I will disclose the relevant portions to union advisors and grievors who will not be permitted to make a copy or disclose their content except as necessary for the hearing of the grievance. At the conclusion of the hearing, the documents will be destroyed or returned to the Hospital.

7. It appeared that the Agreement led to the preparation of an Independent Psychiatric and Psychological Assessment of Dr. Persad ("Assessment").

8. An unredacted copy of the Assessment was provided to the Arbitrator and a redacted copy was provided to the Union. Counsel for Dr. Persad stated that she agreed that the Arbitrator could and should determine any dispute, should one arise, as to the extent of redactions in the Assessment to be provided to the Union.

9. It was agreed that the Union would consider the redacted copy of the Assessment and advise as to whether it was prepared to move forward as suggested by Dr. Persad's counsel.

Particulars

10. By letter dated March 11, 2015 the Hospital had made an extensive demand of the Union for written particulars.

11. The Union agreed that it would provide a response to this demand by no later than May 8, 2015; that is, particulars would be provided.

12. It was agreed that Dr. Persad would review the Union response and advise as to whether she had any further concerns about the adequacy of those particulars. Other potential preliminary issues, including the legitimate scope of the instant Union grievance, were identified by Dr. Persad.

Next Steps

13. It was agreed that a further case management conference would be held on May 13, 2015 commencing at 6pm.

14. At the May 13th case management conference I expect the parties to identify any outstanding prehearing issues. Counsel should consider how this complex matter might be conducted in the most efficient manner possible recognizing that scheduling will no doubt pose a significant challenge.

15. In this regard, I ask the parties to consider whether I might be invited to function as a mediator/arbitrator both with respect to preliminary and case management issues, and, also, concerning the merits of the grievances and their possible resolution. Such a process would of course permit me to consult counsel and/or their clients privately about issues as may seem appropriate on an ongoing basis.

Dated at Toronto, Ontario this 2nd day of April, 2015.


James Hayes