

Rel# 26343
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IN THE MATTER OF AN ARBITRATION

BETWEEN

London Health Sciences Centre

("Hospital")

and

Unifor Local 27

("Union")

Grievance of Randy Marchant

ARBITRATOR: James Hayes

APPEARANCES

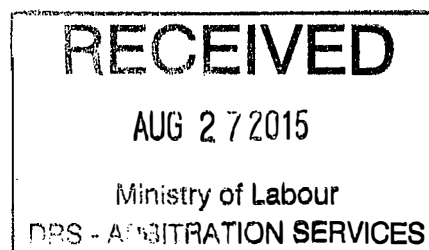
For the Company:

Brian O'Byrne, Counsel
Angela Hodgson, Director, Employee & Labour Relations
Joanne Smith, Human Resources Consultant, Employee & Labour Relations

For the Union:

Jim Pound, National Representative
Sarah Omelia-Muylaert, Unit Chair
Jim Gibson
Greg Peckham
Chris Richards

A hearing was held in London on August 24, 2015



AWARD

1. The Union grieves a three-day suspension imposed upon Mr. Marchant on May 6, 2015.
2. The matter proceeded in an expeditious practical manner in which both parties presented their respective positions at some length but did not exercise rights of cross-examination.
3. Mr. Marchant is a very senior porter with the Hospital and there is no suggestion that he is not fully aware of the important patient safety aspects of his job. He has a relatively minor disciplinary record for lateness incurred during a one-week period earlier in the year. However, I am advised that this issue is no longer problematic and I observe that the May 6, 2015 disciplinary letter makes no reference to reliance upon a prior disciplinary record.
4. The incident that led to the suspension occurred on April 15, 2015. It is alleged that Mr. Marchant delivered a patient on high flow oxygen to Medical Imaging and left him in an Inpatient bay without checking him in with the clerk as required. Mr. Marchant testified that he would not have failed to check in the patient and that he did so.
5. What is not in dispute is that a technician noticed the patient shortly after the time of his CT scan appointment and it was discovered that the oxygen tank was empty. Mona Smellie was the radiology clerk on duty that day. She knows Mr. Marchant and testified that he did not check the patient in. If he had done so, there would be a record. The patient's appointment was for 1pm that coincided with the end of Ms. Smellie's shift that day.
6. An 'adverse event' was reported and Meghan Harper, for the Hospital, investigated the incident less than two hours later. Ms. Harper provided her notes

of her conversation with Mr. Marchant. Ms. Harper's notes confirm her recollection. The grievor at that time did not immediately recall that the patient was on oxygen. When he was reminded of the importance of that issue, Mr. Marchant replied: "must have done it then".

7. The Union submits that Mr. Marchant had no reason to have cut a corner on this occasion. He had nothing to gain. He went immediately to his next assignment. He has testified credibly.

8. The Hospital emphasizes that this was a near miss that could have had extremely serious consequences. Ms. Smellie certainly has no motive to mislead and her evidence should be preferred. The three-day suspension that was imposed is entirely apt and is not dependent upon any prior record.

9. On all the facts as I understand them I am bound to conclude that the grievor failed to check in the patient as alleged for whatever reason. Ms. Smellie's description of her practice was credible. On the other hand, I am persuaded that Mr. Marchant's memory of what occurred that day is suspect. The fact that he could not recall that the patient had been on oxygen less than two hours later, when he spoke to Ms. Harper, tips any balance for me. I wish to make clear however that I do not find that the grievor lied when he gave his evidence. There is little doubt in my mind that he firmly believes that he completed the check in as he always does. Unfortunately he is mistaken.

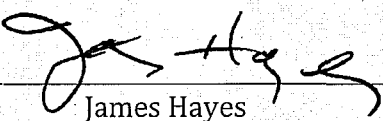
10. The question next arising is whether there is any reason to alter the suspension that was imposed. On the facts as I have found them I find it impossible to conclude that a three-day suspension is an inappropriate employer response.

11. Having said that, there is no doubt in my mind that the appropriate lesson has been learned here. I am also advised that the Union and the Hospital have had further discussions about related portering issues and responsibilities.

12. In all of the circumstances, I direct that the May 6, 2015 letter be withdrawn from the grievor's disciplinary file and that it be replaced with a copy of this Award.

13. The grievance is dismissed.

Dated at Toronto, Ontario this 27^h day of August, 2015.



James Hayes