

IN THE MATTER OF AN ARBITRATION

BETWEEN

William Osler Health System

(the “Hospital”)

and

Teamsters Local Union No. 419

(the “Union”)

Grievance of Janis Sylvester

SOLE ARBITRATOR: James Hayes

APPEARANCES

For the Union

Mireille Giroux, Counsel
Mike Biliski, Counsel [written submissions only]
Tim Oribine
Michael Downey

For the Hospital

Steven Wilson, Counsel
Tracy Tremblay, Human Resources Business Partner
Pat Hall, Attendance Management Coordinator

A hearing was held on February 4, 2015. Written submissions and further pleadings were filed on subsequent dates.

INTERIM AWARD

1. There is a dispute as to how to characterize the termination of the Grievor by the Hospital. The Hospital maintains that the Grievor abandoned her employment. The Union describes her termination as a disciplinary dismissal.
2. At the February 4, 2015 hearing, the parties raised several procedural issues relating to particulars, production of documents, access to the Grievor's Occupational Health file, and order of proceeding. The Union was afforded a post-hearing opportunity to supplement its submissions concerning the order of proceeding. Counsel provided undertakings concerning the other issues.
3. Concerns were later raised about the sufficiency of compliance with those undertakings. Accordingly, I issued a comprehensive e-mail Direction dated March 22, 2015. The parties have since exchanged the particulars and the documents upon which they may choose to rely.
4. The Union continues to raise a production issue. It requests that: "the Employer be directed to identify the person responsible for terminating the Grievor's employment and produce all documents, including but not limited to notes or communications, in respect of the decision to terminate the employment of the Grievor".
5. There can be no dispute that such material, to the extent that it may exist, would be arguably relevant to the grievance as framed. Out of an abundance of caution, I direct that the Hospital produce all documents, including but not limited to notes or communications, relating to the decision to terminate the employment of the Grievor or relating to its conclusion that her employment has been abandoned--as the case may be. I decline to make any further order.

6. Insofar as the 'who should go first' issue is concerned, the parties accept that an arbitrator has the discretion to make such a determination. On the facts as I presently understand them, it appears to me that the case to require either side to proceed initially is quite evenly balanced.

7. Having considered the question, I anticipate no particular economy in requiring the Hospital to proceed first and direct that the Union do so. There is now a reasonably fulsome record. Hospital counsel in opening and in his written material has set out why the Hospital asserts that the Grievor effectively abandoned her position. The Union faces no likelihood of surprise. On the other hand, the Grievor has not been at work with the Hospital since May 2010. She is in the best position to explain what she has done or not done since. That information is not readily discernable from the existing documentary record.

8. This latter direction is made without prejudice to the position of either party concerning the ultimate burden of proof or how the termination of the Grievor should be appropriately characterized.

9. The case will proceed on the date previously scheduled.

Dated at Toronto, Ontario this 27th day of October, 2015.



James Hayes