

IN THE MATTER OF AN ARBITRATION HELD PURSUANT TO S. 50 OF THE *LABOUR RELATIONS*
ACT, 1995:



BETWEEN:

TEAMSTERS LOCAL 847 (the Union)

AND

MAPLE LEAF SPORTS AND ENTERTAINMENT (the Employer)

RE: GRIEVANCE OF ALEXANDRA CLARK (the grievor)

Appearing for the Union: Fernanda Santos

Appearing for the Employer: Les Fisher

Sole arbitrator: Norm Jesin

Hearing Date: December 7, 2015

Rel id: 40740
File id: 845821
Folder id: 10398-RR-15

AWARD:

The grievance in this case alleges that the grievor's employment was terminated without just cause, contrary to the terms of the collective agreement between the parties. The facts giving rise to the grievance are as follows:

The grievor was employed as a part-time server at one of the restaurants operated by the Employer. She had been employed for approximately four and one half years at the time she was terminated. Employees employed as part time servers under the collective agreement binding on the parties may be required to work up to 24 hours per week. Employees are scheduled subject to their seniority and the Employer's requirements.

In or about January, 2014 the Employer instituted an attendance policy. Under the policy the Employer monitors each employees attendance record over the course of a year commencing on July first and ending on the following June 30. If an employee is absent for more than 10% of his/her scheduled shifts without acceptable justification such as medical excuse, the employee is deemed to be terminated. Absences for medical reasons or other authorized absences do not count in the calculation.

Employees are notified in January of each year what their attendance record is for the prior six months to assist them in managing their attendance.

Until July of 2014, the grievor was attending school during the day and worked in the evenings and on weekends. The grievor's weeknight shifts generally commenced at around 4:30 pm. In the summer of 2014 the grievor finished school and obtained full time employment with another employer. She continued to work in her job as a server on a part-time basis. However,

because of her full time job she was unable to regularly attend at her shifts which started at 4:30 pm. In addition, the grievor did not attend all of her scheduled shifts on the weekends. As a result she received a letter in January, 2015 stating that her rate of absenteeism in the previous six months exceeded 29%. In the following six months her rate of absenteeism, although slightly improved, exceeded 17%. As a result the grievor was terminated in accordance with the policy.

At the hearing, the grievor did not dispute the level of absenteeism recorded by the Employer. She stated that she was unable to regularly attend at her shift at the 4:30 start time required by the Employer. She had asked the Employer to accommodate her full time position by giving her a later start time to her shifts but the Employer refused. It was the Employer's contention at the hearing that it required the grievor to maintain her traditional 4:30 start time. As a result the grievor would simply call in stating that she was unable to attend at her scheduled shifts.

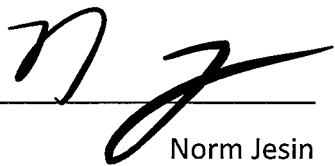
The Union in this case does not oppose the Employer's attendance policy. However, the Union does submit that the Employer should have accommodated the grievor's other employment.

Under the collective agreement between the parties a procedure is established for the scheduling of shifts. Essentially the Employer is entitled to set the hours of operation. Full time have preference in determining their availability and subject to an employee's seniority, the Employer may determine an employee's schedule in any given week. In this case there is no suggestion that the Employer's requirements changed. Rather, the grievor obtained a full time

job. Nothing in the collective agreement requires the Employer to accommodate an employee's outside interests or to accommodate an employee's other employment. It is clear that in this case the grievor's newly acquired full time employment. In these circumstances the Employer was justified in applying its attendance policy and terminating the grievor's employment.

In light of the foregoing, the grievance is dismissed.

Dated at Toronto, Ontario, this 9th day of December, 2015



Norm Jesin