

BETWEEN:

IN THE MATTER OF AN ARBITRATION

TORONTO EAST GENERAL HOSPITAL

(The "Employer")

AND

SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 1 CANADA
(SERVICE FULL TIME)

(The "Union")

AND IN THE MATTER OF THE GRIEVANCES OF PETRINA MATTISON

David K.L. Starkman

Arbitrator

APPEARANCES FOR THE EMPLOYER

Allan Wells
Nader Boutros

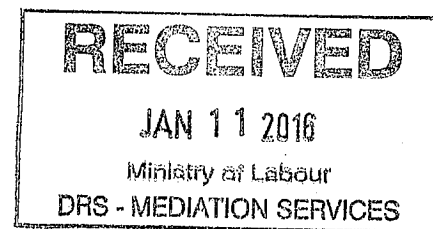
Counsel
Employee & Labour Relations

APPEARANCES FOR THE UNION

Robert Church
Doug Power
Juanita Barrett
Gloria Small

Counsel
Union Representative
Chief Steward
Steward

A Hearing in this Matter was held on December 21, 2015 at Toronto, Ontario



AWARD

On behalf of the grievor, Petrina Mattison, the Union filed several grievances alleging that she had been disciplined, and ultimately discharged from employment as a Registered Practical Nurse in August, 2015; without just cause. At the commencement of the hearing the Employer objected to my jurisdiction to determine the matter on the grounds that the grievances had all been settled. This Award deals with that objection.

The parties filed an Agreed Statement of Facts which provided as follows:

1. The Grievor was employed by the Hospital in the classification of Registered Practical Nurse from May 15, 2006 until her discharge on August 14, 2015. The Grievor had been employed under a collective agreement in effect between the Union and the Hospital.
2. On August 14, 2015, the Hospital terminated the Grievor's employment alleging just cause on the basis of "continued inappropriate conduct".
3. On August 14, 2015, the Union filed Grievance #100-222-220 alleging that the Grievor's discharge was a violation of the Collective Agreement.
4. Prior to her discharge, the Grievor had filed the following grievances against the Hospital, all of which had been referred to arbitration before Arbitrator Barry Fisher with a hearing date set for September 21, 2015.
#2100-216-769 (written warning)
#100-217-821 (suspension)
#100-220-122 (suspension)
#100-220-636 (suspension)
5. The Termination Grievance and the Discipline Grievances are referred to hereafter collectively as the "Grievances".
6. On August 18, 2015 the Union proposed to forego the Step 2 grievance settlement meeting with respect to the Termination Grievance and to combine the Termination Grievance and the Discipline Grievances and proceed directly to arbitration on September 21, 2015.

7. On August 20, 2015, the Hospital declined to forego the Step 2 grievance settlement meeting with respect to the Termination Grievance and declined to consolidate the Termination Grievance and the Discipline Grievances. However, the Hospital agreed to hear the Grievances separately in front of the agreed upon arbitrator on September 21, 2015.

8. On September 8, 2015, the parties and the Grievor met at a Step 2 grievance procedure meeting to try to resolve the Grievances.

9. During the grievance settlement meeting on September 8, 2015, the Union and the Hospital verbally agreed to a full and final settlement of all the Grievances based on the Grievor resigning her employment effective August 8, 2015 and the Hospital paying her a lump sum amount of \$18,000.

10. Within a few hours of the grievance settlement meeting on September 8, 2015, counsel for the Union sent a letter to Arbitrator Fisher advising that "the parties have resolved the above noted grievance. Accordingly, I am writing to request that the hearing scheduled for September 21, 2015 at Atchison and Denman be cancelled."

11. Also on September 8, 2015, the Hospital sent the Union written Minutes of Settlement that reflected the terms of the verbal agreement that had been reached between the parties and the Grievor.

12. On September 24, 2015, the Union sent a letter to the Hospital that advised as follows:

We met on September 8, 2015 for a Step 2 grievance meeting in respect of the termination of Petrina Mattison.

The Hospital proposed a settlement of all outstanding grievances as it relates to Ms Mattison's employment. Ms Mattison had a scheduled arbitration hearing before Barry Fisher on September 21, 2015. There was a verbal settlement between the parties but nothing in writing. The written settlement was emailed to me on September 9, 2015.

I forwarded the settlement via email to Ms Mattison on the same day. Ms Mattison disagreed with the written settlement; and I informed you of Ms Mattison's decision...

13. Based on the Grievor's decision not to sign the Minutes of Settlement, the Union advised the Hospital that it will be proceeding to arbitration on the Grievances.

Mr. Nader Boutros, the Manager of Employee & Labour Relations, testified with respect to the meeting on September 8, 2015. He stated that the Grievor attended the meeting accompanied by Mr. Douglas Power, a Union representative. He stated it was his intention to resolve all matters by offering a lump sum payment in exchange for the grievor's resignation and a release of all claims against the Hospital.

His initial offer to the Union and the grievor was payment of Employment Standards Act minimums, turning the termination into a resignation, a final release from the grievor and confidentiality of the terms of the settlement. He left the room.

Mr. Powers came out of the meeting room and advised that the Grievor was asking for a lump sum greater than \$30,000.00. Mr. Boutros went back into the room and offered a lump sum of something less than \$15,000.00 and again left the room. Mr. Powers came out from the meeting room and asked for \$18,000.00. Mr. Boutros testified that he advised Mr. Power that he would agree to \$18,000.00 if it finally resolved all matters.

Mr. Power went back into the room and then came out and said "we have a deal", and asked to add to the deal the possibility that the grievor could put the settlement monies into an RRSP.

Later that day, Mr. Boutros typed the Minutes of Settlement and sent them to Mr. Power. The Minutes provided as follows:

WHEREAS Petrina Mattison's employment was terminated for just cause on August 14, 2015, as a result of repeated inappropriate conduct;

AND WHEREAS Petrina Mattson filed grievances dated July 23, 2013, December 19, 2013, November 11, 2014, January 22, 2015 and August 14, 2015;

AND WHEREAS the parties wish to fully and finally resolve the matter relating Petrina Mattison's employment;

NOW, THEREFORE, the parties agree as follows:

1. WHEREAS Ms Mattson irrevocably and voluntarily agrees to resign her employment effective the date of these Minutes of Settlement and Release, in exchange for a lump sum payment in the amount of \$18,000 (eighteen thousand dollars) minus all statutory deductions. Ms Mattison acknowledges and agrees that she has no further compensation entitlements or any rights or benefits under the Collective Agreement or any other legislation.

2. Ms Mattison may choose to have a portion of the sum set out in paragraph 1 above, as permitted by the Income Tax Act, to be deposited directly into Ms Mattison's R.R.S.P. per the documentation that she must provide to the Hospital's payroll department.

3. Ms Mattison agrees to sign the Release attached as Schedule A to these Minutes of Settlement.

4. Ms Mattison's employment file will be sealed and only accessible by Nader Boutros or his successor. The Employer will not disclose the contents of the Employee's employment file to any third party unless required by law.

5. The Hospital will provide Ms Mattison with a letter of employment, attached, Schedule B. Any inquiries from current or prospective employers will be directed to Nader Boutros or his successor, whose comments shall be limited to those in Schedule B.

6. The Union and Ms Mattison accept this agreement as constituting a full and final settlement of the grievances dated July 23, 2013, December 19, 2013, November 11, 2014, January 22, 2015, August 14, 2015, and any other related matter.

7. All parties agree to keep the terms of this Settlement in strict confidence and not to disclose the terms of this Settlement to any person or persons, except to the extent that such disclosure may be required by law or to permit Ms Mattison to obtain professional tax planning advice. Should Ms Mattison disclose any part of these Minutes of Settlement or defame the Hospital or its employees in any way Ms Mattison will be required to repay all of the amount paid under this agreement with the balance of the agreement remaining.

8. Ms Mattison acknowledges that by signing this Agreement she confirms that she has carefully read and understood this Agreement and enters into it voluntarily, having been fully and fairly represented by the Union in this matter.

9. The parties agree that this settlement is without prejudice or precedent to future matters between them, save and except for the purposes of enforcement of this settlement

Agreed to at Toronto, Ontario this day of 2015

FOR THE HOSPITAL

FOR THE UNION

Petrina Mattison

SCHEDULE "A"

FULL AND FINAL RELEASE

I, Petrina Mattison of the Province of Ontario, in consideration set forth the attached Minutes of Settlement (the "Settlement"), the sufficiency of which is expressly acknowledged, do hereby release and forever discharge Toronto East General Hospital (the "Hospital") and the trustees, officers, directors, managers, employees, representatives and agents of the Hospital (hereinafter collectively with the Hospital referred to as the "Releasees") from all actions, causes of action, grievances, complaints, claims, damages, liabilities, statutory rights and obligations, agreement and torts (both intentional and unintentional) whether presently known or unknown, as against the Releasees or any of them which I ever had, now have, or which I can, shall or may hereafter have for or by reason of any cause, matter or thing whatsoever arising from: (a) my hiring and employment by the Employer and the cessation of my employment; and (b) any benefits provided to me or which should have been provided to me during my employment and/or subsequent to the cessation of my employment. Without limitation, I specifically covenant, represent and warrant to the Releasees that I have no further claim or grievance against the Releasees arising out of my employment or the cessation of such employment including, without limitation, any claims for pay, notice of cessation, pay in lieu of such notice, severance pay, retirement benefits,

overtime pay, interest, benefits, vacation pay and specifically including any claim under the Ontario Employment Standards Act, 2000, the Ontario Labour Relations Act. I further represent that I am aware of my rights under the Ontario Human Rights Code and in consideration for the above payment I am not asserting any rights or advancing a human rights claim or complaint, whether through arbitration or the Human Rights Tribunal of Ontario.

In consideration for the above payment, I hereby acknowledge that I have no further rights under any Collective Agreement between the Employer and the Union Service Employees International Union, Local 1 Canada (the "Union"), including seniority and recall rights. I agree that I have no claim against the Union for unfair representation under Section 74 of the Labour Relations Act.

If I should hereafter make any claim or demand or commence or threaten to commence any action, claim, complaint, application or proceeding whatsoever against the Releasees or any one or more of them for or by reason of any cause, matter or thing, this document may be raised as an estoppel and complete bar to any such demand, action, claim, complaint, application or proceeding.

In consideration of the foregoing, I will maintain the terms relating to the monetary value of the Settlement in strict confidence and will not disclose, directly or indirectly, such terms to any person except to the extent that such disclosure may be required by law or to permit me to obtain professional tax planning advice.

I agree to indemnify the Releasees and save them harmless from any and all income tax, employment insurance or Canada Pension Plan charges, penalties, fines, interest or any payments whatsoever that may be claimed by either the Receiver General for Canada or Canada Revenue Agency in respect of any failure by the Releasees, as a result of any alleged mischaracterization of the settlement funds, to withhold any required amounts from payment owing to me pursuant to the Settlement.

I have read and understood this Release and have obtained independent legal advice with respect thereto from the Union. I understand that this Release contains a full and final release of all claims that I have or may have against the Releasees relating to my hiring and employment or the cessation of such employment. I understand and agree that the payment of the above consideration is not deemed to be any admission of liability on the part of the Releasees and in fact such liability is specifically denied by them.

All of the foregoing shall enure to the benefit of all the Releasees, their successors and assigns, and be binding upon me and my respective heirs, executors, administrators and assigns.

SIGNED in the presence of:

Witness Signature

Petrina Mattison

Print Name of Witness

Date

SCHEDULE "B"

TO WHOM IT MAY CONCERN

This letter will confirm that Petrina Mattison was an employee of Toronto East General Hospital (TEGH) from May 15, 2006 until August 14, 2015. During her employment at TEGY Ms Mattison worked as a Registered Practical Nurse in the Emergency Health Services department

Sincerely

Nader Boutros
Senior Employee & Labour Relations Specialist
Toronto East General Hospital

Due to the Privacy and Confidentiality Policy of the Hospital a written authorization from the bearer is required to confirm details of this letter.

The grievor testified that she attended the grievance meeting on September 8th, and did not believe they reached a final deal. She stated that she did not agree to the amount of \$18,000 and certainly did not agree to the terms of the Release. She indicated that

she had filed a harassment complaint against her supervisor in February, 2015, and was not prepared to give up her right to pursue the complaint.

She stated there was no written settlement. It was her understanding that, when the meeting concluded, she was to receive a written document and would be able to review the terms and at that point decide whether to accept the settlement or not.

SUBMISSIONS OF THE PARTIES

The Employer submitted that the jurisprudence is clear that the Union and the Employer are the parties to the collective agreement and it is only the parties who have the ability to initiate and settle grievances, and when the meeting concluded on September 8th, the Union and the Hospital had a verbal agreement that resolved all of the outstanding grievances involving the grievor.

In its view there is no requirement that a grievor be involved in the settlement process and reference was made to article 8.09 of the collective agreement which provides:

8.09 All agreements reached under the grievance procedure between the representatives of the Hospital and representatives of the Union will be final and binding upon the Hospital, the Union and the employee(s).

The Union submitted that the onus is on the Employer to satisfy this Board of Arbitration that an agreement had in fact been reached, and in its view, there was insufficient evidence to meet that onus. In its view, there was not a meeting of the minds. There remained issues to be determined, and reference was made to the decisions in *Assn. of Management Administrative and Professional Crown Employees of Ontario and Ontario*

(*Ministry of Health and Long-Term Care*) (*Gloveman Grievance*), [2003] O.G.S.B.A. No. 46 (F.D. Briggs), *Re Doman Forest Products Ltd., Nanaimo Sawmill Division and International Woodworkers of America, Local 1-80*, [1983] B.C.C.A.A.A. No. 660 (D.R. Munroe), *FPC Flexible Inc. and G.C.I.U., Loc. N-1 (Dixon)* [1997] O.L.A.A. No. 1115 (H.D. Brown), and *Ontario Liquor Boards Employees' Union and Ontario (Liquor Control board)* (*East Grievance*), [2004] O.G.S.B.A. No. 131 (O.V. Gray).

DECISION

The issue is whether the Union and the Employer settled the grievances involving Ms Mattison. This is an important issue because Employers and Unions settle many issues and arriving at and enforcing settlements is of exceptional importance to labour relations.

As noted at paragraph 29 of the decision in *Ontario (Ministry of Children and Youth Services) and OPSEU (Coelho)*, (2013) 116 C.L.A.S. 244 (M. Lynk):

Productive labour relations in Canada depend upon the creation and maintenance of trust, respect and reliance between employers and unions in their dealing with each other. This does not mean that they have to agree with one another all of the time, or even that they will forestall from using the tools of hard bargaining and litigation to win a point. Indeed, intense disagreement, legal battles and industrial action are common place as part of the warp and woof of modern labour relations and labour law in Canada. It does mean, however, the parties are expected to engage in meaningful negotiations to settle differences as they arise, and it does mean that the parties ought to be secure in their belief that the law will respect and enforce the agreement that they reach. Because differences between employers and union arise continuously, and because productive industrial relations depend upon the efficient and effective resolution of these differences, labour law has erected a system of rules that encourages and reinforces a cooperative spirit between the parties.

The issue of whether a settlement has been reached has been the subject of numerous arbitral awards and is summarized in *Ontario (Ministry of Community and Social Services and OPSEU (Corbiere)*, (2013), 115 C.L.A.S. 234 (N. Dissanayake) at paragraph 7 as follows:

The employer provided numerous legal authorities, including excerpts from texts on the law of contract, as well as decisions from labour relations boards, arbitrators and this Board itself. Based on a review of these authorities a simple test emerges for determining whether or not a grievance had been settled. The question must be asked whether a point of time had been reached, and understood by the negotiating parties, when there were no longer any issues in dispute between them related to the grievance. If the answer is in the affirmative there was a settlement at that point of time. There is no requirement that a settlement be in writing and/or be signed off for it to be in effect and enforceable, unless of course it is explicitly so agreed....

It is clear that the Union and the Employer are the parties to the collective agreement and, subject to its duty of fair representation, the Union and the Employer can settle grievances without the consent of an individual grievor.

It is also clear that a Memorandum of Settlement need not be in writing. As stated at paragraph 22 of the decision in *Air Canada and CAW-Canada Local 2213* (2002) 107 L.A.C. (4th) 250 (M.K. Saltman):

22. With respect to the memorandum of settlement, the jurisprudence is clear that it is not necessary that a memorandum be executed in order to settle a grievance. So long as there is a meeting of the minds on the substantive issues, an oral agreement is just as binding as a written one: see *Re Sudbury District Roman Catholic Separate School Board and O.E.C.T.A.* (1997), 61 L.A.C. (4th) 223 (Kaplan); *Re Bilt-Rite Upholstering Co. Ltd. and Upholsterers' International Union of North America, Local 30* (1979), 24 L.A.C. (2d) 428 (Rayner)...

In Her Majesty in Right of the Province of Manitoba and the Manitoba Government Employees' Union, (1997), 68 L.A.C. (4th) 321 (Freedman) at paragraphs 42 - 43 the Board of Arbitration commented on settlements in the labour relations context as follows:

42. As a matter of principle unions and employers often settle grievances verbally, and often settle grievances in writing, and often confirm in writing settlements reached verbally. So long as the facts clearly demonstrate that the Province and the Union have unconditionally agreed to settle a matter, and so long as no question is then left open expressly or implicitly between them as to whether the grievor is to be bound, verbal or written settlements between the Union and the Province will bind a grievor. In my view a settlement was reached when the Province accepted the proposal in the February 6 letter and the subsequent Memorandum of Settlement need never have been signed by either party. The required degree of certainty had already been achieved.

Similarly, in the case I have determined that the Union and the Hospital settled the grievances concerning Ms Mattison at the meeting on September 8, 2015. The Hospital made an offer to pay Ms Mattison \$18,000.00 in exchange for her resigning her employment, signing a release, and keeping the terms of the settlement confidential. The Union knew, and the grievor probably knew, that signing a release meant that she would not have the right to pursue any further grievances or complaints against the Hospital for events that transpired during the course of her employment in any forum.

Mr. Power, the Union representative at the meeting, orally confirmed the settlement to Mr. Boutros the Employer representative, and following the meeting, counsel for the Union wrote to Arbitrator Fisher, who was scheduled to

hear the grievances including the discharge grievance on September 21st, as follows:

Please be advised the parties have resolved the above noted grievance. Accordingly I am writing to request that the hearing scheduled for September 21, 2015 at Atchison and Denman be cancelled.

Thank you for your assistance with this matter, we look forward to working with you in the future.

When the grievor was asked to sign the Minutes of Settlement and the Release she testified that she did not wish to do so because the monetary payment was too low, and because she wished to pursue other remedies against the Employer, in particular at the Human Rights Tribunal. Whether or not the grievor changed her mind between the meeting on September 8th and being presented with the settlement document is not material to this decision. The parties to the collective agreement are the Union and the Employer and the Union has the right, subject to its duty of fair representation, to settle grievances even if an individual grievor objects to the terms of the settlement.

A similar situation arose in *Brinks Canada Ltd. and CAW-Canada, Local 27*, (2012) 220 L.A.C. (4th) 200 (R.L. Levinson). The Union and the Employer arrived at a settlement of a grievance which provided that the grievor would sign a release which the grievor subsequently refused to do. In determining that the grievance was nevertheless settled, the Board of Arbitration made the following comments at paragraph 7:

Turning to the facts here, I find that the parties to the collective agreement, namely the Company and the Union unconditionally resolved the dispute arising from the grievor's grievance, and intended the Agreement to be binding. The Agreement is effective, valid and binding. Its terms are clear. They were reduced to writing in the Agreement, and were agreed upon. At that point, there was nothing further for the parties to negotiate. There was no longer a continuing dispute between the parties about the merits of the grievance. While unsigned, I find the Agreement to be effective, valid and binding on the parties. In reaching this conclusion, I do not find the term "In exchange for the settlement, the Grievor will agree to sign the attached release form." in the Agreement to be a condition precedent for it to become effective, valid and binding. In the present surrounding circumstances, I do not consider the foregoing term to represent a sufficiently clear expression of intention by the parties that the grievor must also consent to the terms of the Agreement, or that he has a right independent of the parties, to elect to accept the Agreement at his unilateral discretion, before it becomes effective, valid and binding. Rather, the foregoing term represent the parties' contemplation and intention that the grievor perform a specific action, as part of the agreed upon settlement.

At the meeting on September 8th the Union and the Employer had a meeting of the minds and settled all outstanding issues with respect to Ms Mattison's grievances and complaints about her treatment by the Employer. There were no outstanding issues or substantive matters to be resolved. The agreement is binding upon the parties and the grievor. Accordingly I have no jurisdiction to inquire into the merits of the grievances.

The grievor has refused to sign the Minutes of Settlement. This does not change the fact that there has been a settlement between the Union and the Employer, being the parties to the collective agreement. One of the terms of the settlement is that the grievor sign the Minutes of Settlement. If the grievor does not sign the Minutes of Settlement I will remain seized with respect to issues concerning the

enforcement of the Minutes of Settlement and also with respect to any issues concerning the interpretation of this Award.

Dated at Maberly, Ontario this 31st day of December, 2015

A handwritten signature in black ink, consisting of a stylized 'D' followed by 'K.L.' and a surname that appears to be 'Starkman'.

David K.L. Starkman