

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TEAMSTERS LOCAL UNION 847 (the Union)

AND

MAPLE LEAF SPORTS AND ENTERTAINMENT (the Employer)

RE: SHANYSE ROWE (the grievor)

Appearing for the Union: Fernanda Santos

Appearing for the Employer: Les Fisher

Sole Arbitrator: Norm Jesin

Hearing Held: March 4, 2016

AWARD:

The grievance in this case alleges that the grievor was discharged from her employment with the Employer without just cause, contrary to the collective agreement between the parties. The facts giving rise to the grievance are as follows:

The grievor was employed as a part time housekeeper. In or about January, 2014, the Employer and the Union negotiated an attendance policy. Pursuant to the policy employees who had an unexcused absence record exceeding more than ten per cent of their scheduled shifts between July 1 and the following June 30 in any given year would be subject to automatic termination. It should be noted that absences for substantiated medical reasons or absences to attend to legitimate family emergencies do not count as unexcused absences under the policy. It should further be noted that a part time employee's shifts are scheduled by the Employer in accordance with availability as communicated by the employee to the Employer.

At the end of the 2014 season, a number of employees exceeded the 10% threshold of unexcused absences for the period of January 1 – June 30, 2014. However, because those calculations were made over a six month period the parties agreed that no action would be taken at that time and the policy would be implemented for the July 1, 2014 – June 30, 2015 year.

At the end of June 30, 2015 the Employer determined that the grievor's rate of unexcused absence exceeded 27%. In reviewing the matter the Employer found that one of the absences it relied on was supported by a doctor's note. The Employer therefore removed that

absence from its calculation. However the absence rate was only reduced to 26%. As a result the Employer terminated the grievor's employment in accordance with the policy.

The Union does not dispute the record that is relied on by the grievor. However, the Union notes that the grievor did have medical issues during the period in question as she suffered from back pain and was placed on modified duties. However it should be noted that the medical evidence supported the grievor's ability to attend work and perform the modified duties provided and there was no medical evidence presented supporting the unexcused absences relied on by the Employer.

At the hearing, the grievor stated that during the period in question, the grievor's mother was recovering from an injury and that she required additional care. However, the evidence does not support that the grievor sought time off to care for her mother at the time of her absences to an extent that would reduce her threshold absence anywhere near the 10% maximum allowed by the policy. At the hearing the grievor conceded that she had "messed up" and that if she were to be reinstated that she would promise to do better.

I am not unsympathetic to the grievor's predicament. However, the policy, as negotiated between the parties and implemented by the Employer is a reasonable one. The grievor's absentee record in this case is certainly excessive. The facts of this case do not, in my view, support the substitution of a penalty that is different than the specific penalty agreed to by the parties in the policy. The Employer was justified in the circumstances in applying the policy to terminate the grievor's employment. For these reasons the grievance is dismissed.

Dated at Toronto, this 7th day of March, 2016.

A handwritten signature in black ink, consisting of stylized letters 'N' and 'J' followed by a long horizontal flourish.

Norm Jesin