

IN THE MATTER OF THE *LABOUR RELATIONS ACT*

ARBITRATION

BETWEEN:

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
183

(The "Union")

-and-

HALLMARK HOUSEKEEPING SERVICES INC.

(The "Employer")

RE: DISCHARGE GRIEVANCE

BEFORE: T.E. Armstrong, Arbitrator

APPEARANCES:

For the Employer: Andrew Reynolds, Counsel
Keith Mottram

For the Union: Andrew Black, Counsel
John Da Silva, Union Representative
Ryan Hilborn, Student

HEARING: JUNE 24, 2016

DECISION

1. The Union filed a grievance on behalf of the Grievor on March 8, 2016, alleging that she had been terminated without cause and harassed by the Employer. I have not named the Grievor in view of the fact that allegations have been made concerning her mental state which I have concluded should not be attributed to a named Individual without evidentiary support.

2. The Grievor performed housekeeping services for clients of the Employer. On March 8, 2016, she received a letter from the Employer's Director of Operations repeating previous representations made to her and to the Union concerning the Employer's contention that she had been "exhibiting paranoia and other mental-health related behaviours while at work". The letter stipulates eight specific situations claimed to support its allegations.

3. In the same letter, the Employer states that the Grievor should remain off work until a duly qualified medical practitioner had certified her ability to return to work, adding that at that point she was not being terminated or disciplined in any way, indicating that it was hoped that following any treatment opportunities available she would be able to resume employment in the near future.

4. On the same date, i.e., March 8, 2016, the Union filed a grievance alleging that the Grievor had been terminated unfairly and harassed by the Employer. The grievance asks, inter alia, that the Grievor be reinstated, compensated for lost earnings and awarded damages.

5. On March 16, 2016, the Union and its Counsel met with the Grievor. Subsequently, a letter from the Union's Counsel dated March 21, 2016 was written to the Grievor confirming that an independent medical examination had been scheduled for her on March 30, 2016. The time, place and identity of the physician was set out in the letter, as were two medical releases which the Grievor was asked to complete.

6. On March 28, 2016, a letter marked "Delivered Via Courier and Registered Mail" was addressed to the Grievor by the Union's Counsel summarizing relevant previous events. In particular, the letter states that at the March 16, 2016 meeting, the Grievor had been advised that the grievance had been filed on her behalf and that the Union had advised her that in light of the Employer's position "the prudent interim course of action would be for you to undergo an Independent Medical Examination ("IME"). Counsel added that "the sooner that we can provide your employer with a medical opinion addressing the alleged concern, the sooner we would expect Hallmark to reinstate you on its own accord..."

7. On May 9, 2016, in a letter marked "Hand Delivered", Counsel for the Union advised the Grievor of the fact that the grievance had been referred to me as

Arbitrator and advised her of the date, time and place of the hearing. The letter also requested the Grievor's attendance at the Union's office on June 21, 2016 at 2:00pm to prepare for the hearing.

8. On May 18, 2016, Counsel for the Union wrote a letter marked "Delivered Via Registered Mail" to the Grievor setting out the attempts by Representative Da Silva to hand deliver to the Grievor the letter of May 9, 2016, as well as Mr. Da Silva's numerous unsuccessful attempts to contact her by telephone and SMS text message. The letter requests the Grievor to contact Representative Da Silva immediately.

9. On June 7, 2016, in an letter marked "Delivered Via Registered Mail" Counsel for the Union stated that his letter of May 18, 2016 had been returned to the Union as "refused by recipient". The letter also referred to a telephone conversation between Counsel and the Grievor on June 7, 2016, during which the Grievor is said to have asserted that she had no intention or interest in returning to work with the Employer, nor to attend or participate in the scheduled arbitration and that she did not wish to have anything further to do with the Union.

10. There is no disagreement between Counsel as to the process described in the above paragraphs. In the circumstances Counsel for the Employer asks me to dismiss the grievance. Counsel for the Union asks that I adjourn the hearing sine die. In support of his position, Counsel for the Employer cites the following cases: Liquor Control Board of Ontario and OPSEU [2008] O.G.S.B.A. No. 118; Y.W.C.A. of Metropolitan Toronto and CUPE, Local 2189 [1995] 5975; Sobey's v. UFCW, Local 175 [2002] O.L.A.A. No.595; Deloitte & Touche v. S.E.I.U., Local 1 [2011] 6128.

11. On the basis of the documentary evidence adduced and the representations made, it would appear that the Grievor was given every reasonable opportunity to appear before me on June 24, 2016. In addition, the case law relied upon by Counsel for the Employer, in the circumstances of those cases, clearly supports dismissal of the grievance.

12. However, this is a situation in which mental instability has been alleged. In these somewhat unique circumstances, my decision is to retain jurisdiction. In doing so I wish to make it clear that it does not follow that in the unlikely event

that the Union requests that I set a future date to hear the merits of the dispute, I will do so. If that occurs, I will hear representations from both parties as to the circumstances surrounding the request for continuation. In that situation, it should be understood that there will be a substantial onus on the Union to satisfy me that the Grievor's apparent abandonment of the grievance set for hearing on June 24, 2016, should not preclude a reconvened hearing and a determination on the merits.

DATED AT TORONTO this 29th of June, 2016.

A handwritten signature in cursive script, appearing to read 'T.E. Armstrong', is written over a horizontal line. The signature is fluid and extends to the right, ending in a long, sweeping tail that curves downwards.

T.E. Armstrong
Arbitrator