

**IN THE MATTER OF AN ARBITRATION BEFORE ARBITRATOR JESIN
PURSUANT TO THE *ONTARIO LABOUR RELATIONS BOARD***

BETWEEN:

NORTH BAY REGIONAL HEALTH CENTRE

Employer

and

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 139

Union

GRIEVANCE OF JODY WALL (G-15-60)

BEFORE NORM JESIN, SOLE ARBITRATOR

APPEARING FOR THE EMPLOYER:

Shane Smith, Counsel
Shelly Bélanger, Human Resources
Darla Bates, Manager

APPEARING FOR THE UNION:

Wassim Garzouzi, Counsel
Shawn Shank, Local President
Linda Bertrand, Vice President
Terry Maki, Chief Steward
Josie Levesque, Steward

A hearing was held in this matter on November 30, 2016.

[1] This case concerns the discharge, on October 7, 2015, of the grievor, Jody Wall, for failing to renew certification required by the Employer. The grievance in this case challenges the termination.

[2] None of the facts in this matter are in dispute. Mr. Wall has been employed as a Registered Practical Nurse ("RPN") since 2006.

[3] In October 2014, Mr. Wall was given a performance appraisal, which included specific certification he needed to complete and which was required by the employer, namely CPR. He was given until December 2014 to complete the certification.

[4] Mr. Wall did not complete the required certification.

[5] On September 22, 2015, Mr. Wall was disciplined for unrelated events.

[6] On October 7, 2015, during the grievance meeting for the aforementioned incident, Mr. Wall was advised that he was being terminated for failing to complete his certification, as required and outlined in his performance review from the previous year.

[7] On October 8, 2015, the Union presented a grievance challenging the termination.

[8] On October 25, 2015, the parties resolved the unrelated grievance, and reduced the discipline. The Union relied on *Canada Post Corporation v Canadian Union of Postal Workers*, 2016 CanLII 16519 (Burkett) in support of its position that the principle of progressive discipline must be followed and that in situations where discipline is subsequently reduced after a termination, this is a factor that an arbitrator must take into account.

[9] At the hearing, both sides agreed to present evidence and arguments on an expedited basis, and the Grievor accepted full responsibility for his actions. He was prepared to let the facts, as elicited from the documentary evidence, speak for themselves.

[10] Having regard of the representations of the parties, I hereby order the following:

- The Grievor shall be reinstated effective present date, but actively returned to work by no later than January 30, 2017, with no loss of service or seniority;
- The termination letter dated October 7, 2015, is hereby rescinded and replaced with a five (5) day suspension;

[11] Nothing in this award shall derogate from the rights that either party has or may have under the collective agreement and which are not specifically addressed in this award.

[12] I will remain seized to deal with any issues flowing from this award.

Dated at North Bay, Ontario, on November 30, 2016.


Norm Jesin

