

IN THE MATTER OF AN ARBITRATION

BETWEEN

London Health Sciences Centre

("Hospital")

and

Unifor Local 27

("Union")

Grievance of Lynn Tapper

ARBITRATOR: James Hayes

APPEARANCES

For the Company:

Brian O'Byrne, Counsel

For the Union:

Jim Pound, National Representative

A hearing was held in London on December 15, 2016

AWARD

1. Ms. Tapper grieves a three-day suspension imposed on July 19, 2016 for alleged misconduct that occurred on her June 29, 2016 shift.
2. The parties agreed that the grievance would be assessed on the basis of arbitral consideration of the concerns of the Hospital and the informal explanations provided by the Grievor. There were no cross-examinations.
3. No valid purpose would be served in canvassing the details of what is said to have occurred. Suffice it to say that the Grievor was instructed by Dispatch to work with a student on the night shift in question. The Grievor declined and the Hospital alleges that inappropriate comments were made.
4. It is Ms. Tapper's very firm opinion that she did nothing wrong and that she has nothing to apologize for. She states that she had never been previously asked to train a student and that she understood that her colleagues when doing so had been given prior notice. She did not see that training students was part of her job. She was the only porter on that particular night shift where there should have been two. Furthermore, she says that the student told her at the outset that: "I'm supposed to tell you that I'm not to do trips by myself as I haven't got a police check." It was her understanding that the student could do nothing at all. She says that the comments, objected to by the Hospital, were never directed against the student. The student was not offended or upset by what happened. The Hospital has misinterpreted or misstated what she said.
5. The Grievor has a clear disciplinary record and will have accrued 31 years service by next month.
6. The Hospital alleges that the Grievor was insubordinate. Her comments were rude. She should have known that her duties included the training of students

whether or not she had been called upon in the past to do so. This is a teaching hospital. The Grievor acted entirely inappropriately.

7. Following this incident, the Grievor was placed on a steady day shift for approximately two months. The Hospital confirms that she did well at that time. The Grievor however has worked the night shift for years and holds a strong preference for working then. She explained that this involuntary shift transfer resulted in her loss of shift premium, premium of significant value to her. The Hospital states that there is no contractual impediment to such a temporary shift transfer.

8. Having considered the representations of the parties, I conclude that at the very least the Grievor could have handled the student request differently. I find that there was some basis for the imposition of some discipline. As explained to me, the student could have worked the shift with the Grievor, and, given her seniority, I would have expected Ms. Tapper to know that she had some obligation in that regard. Her flat refusal was out of line. Having said that, there is insufficient evidence before me to conclude that her comments that night were intentionally insubordinate. They may have been misunderstood. Clearly, the student was in no way offended.

9. In all of the circumstances, and particularly having regard to the financial impact of the shift transfer that flowed directly from the incident in question, I find that the Grievor should receive the amended notation of a one-day suspension. She shall however be compensated for all three days previously served.

10. I remain seized to the extent necessary.

Dated at Toronto, Ontario this 20th day of December, 2016.


James Hayes