

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Ornge

(herein referred to as the "Employer")

-and-

Unifor Local 2002

(herein referred to as the "Union")

Tina Lennon Termination Grievance



Arbitrator: Tom Hodges

Appearances:

For the Union:

Kelly-Anne Orr, National Representative
Chuck Telkey, Bargaining Unit Chairperson
Ashley Watkins, Assistant to the President, Local 2002
Mike Chad, Bargaining Committee
Dan Lefebvre, Bargaining Committee
Tina Lennon, Grievor

For the Employer:

Robert Giguere, Chief Operating Officer
Foster Brown, Director, Human Resources and Labour Relations
Wade Durham, Director, Operations

A hearing in this matter was referred to me on February 26th, 2016.

The Parties, Ornge and Unifor Local 2002, have referred to me grievances addressing the termination of Tina Lennon, and the job positing competitions held by Kevin St. Amant and Carla Agnew.

I have heard the submissions made by each Party, including the Employer's alternative submissions requesting that the Grievor be placed on a "Last Chance Agreement" if the union's request to reinstate her is successful, and make the following orders.

File ID: 871462
Folder ID: 10660-RR-16
Rel ID: 7759

1. Tina Lennon's termination will be substituted for a letter of suspension subject to the terms of a "Last Chance Agreement". The terms of the "Last Chance Agreement" is awarded and appended as Schedule "A"
2. Ms. Lennon shall be reintegrated into a rotational position in Sudbury but shall not be reimbursed for any back pay and the term of the suspension shall be deemed to be the period between the date of termination and the date of reinstatement subject to the terms set out in the Last Chance Agreement.
3. Subject to the successful completion of a reintegration plan, the Ms. Lennon shall be reinstated into a Rotational Position based in Sudbury.
4. Unless otherwise stipulated, the Ms. Lennon shall be deemed to have retained all service and seniority for all other purposes.
5. The postings awarded to backfill Ms. Lennon are void and to be undone. Specifically:
 - (a) Kevin St. Amant will remain as an ACP Swing in Sudbury, subject to the resolution of grievance 344-50-15.
 - (b) Carla Agnew will remain in Sioux Lookout.
6. I will remain seized with any issues arising out of the implementation of this award.

Dated this 29th day of February, 2016



Arbitrator Tom Hodges

SCHEDULE "A"
LAST CHANCE AGREEMENT BETWEEN
ORNGE

(herein referred to as the "Employer")

AND

UNIFOR LOCAL 2002

(herein referred to as the "Union")

AND

TINA LENNON

(herein referred to as the "Grievor")

1. The Parties agree that this Last Chance Agreement represents her "last chance" to preserve the employment relationship with the Employer.
2. The Parties agree that the Grievor will not engage in any disciplinable conduct including, but not limited to neglect of duty, failure to comply with SOP's, failure to perform all duties required of her in her job, including attending regularly and on time for work, failure to follow instructions, failure to comply with safety regulations, being absent without leave or culpable absenteeism.
3. In the event that the Grievor's employment is terminated for breaching paragraphs 4 and / or 5 above and in the event that a grievance regarding termination is lodged, any resulting arbitration case shall be limited to a determination as to whether the Grievor engaged in culpable conduct warranting any disciplinary response. Should it be established on a balance of probabilities that the Grievor engaged in disciplinable conduct, the Employer and Union hereby agree that the arbitrator will have no jurisdiction under the Collective Agreement or the *Ontario Labour Relations Act* to substitute a lesser penalty than discharge. Such penalty shall constitute a specific penalty within the meaning of the *Labour Relations Act*.
4. The Grievor further acknowledges that she has been fully and fairly represented by the Union in the presentation of his concerns and in the negotiation of this settlement.
5. This settlement is without prejudice or precedent to any other matter involving any other Employee or Grievor and shall not be referred to nor relied upon in any other proceedings save and except for the purpose of enforcing the terms contained herein.

6. The Parties may work together and with HOOPP to allow the grievor to bridge any personal contributions to which she may be eligible and willing.
7. The Grievor will be permitted to bid on open vacation and stat holiday slots on a pro rata basis once she is reintegrated and returned to her rotational position in Sudbury.
8. This Memorandum of Agreement shall constitute the complete agreement between the Employee, the Union and the Grievor and represent full and complete settlement of all issues raised in the Grievance.
9. This Memorandum of Agreement shall remain in effect for twelve (12) months from the date of the award.
10. This Memorandum of Agreement will survive the expiry of the Collective Agreement and be deemed to amend it where necessary.
11. In the event of a conflict between the Collective Agreement and this Memorandum of Agreement, the provisions of this Agreement shall prevail

IN THE MATTER OF AN ARBITRATION

BETWEEN

ORNGE

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AND

UNIFOR LOCAL 2002

(herein referred to as the "Union")

TINA LENNON TERMINATION GRIEVANCE



ARBITRATOR: Tom Hodges

FOR THE UNION: Kelly-Anne Orr, National Representative
Chuck Telkey, Bargaining Unit Chairperson
Ashley Watkins, Assistant to the President
Cheryl Robinson, President
Michael Chad, Southern Bargaining Representative
Dan Lefebvre, Northern Bargaining Representative
Tina Lennon, Grievor

FOR THE EMPLOYER: Robert Giguere, Chief Operating Officer
Marc Tremblay, Director, Paramedic Operations
Wade Durham, Director, Operations
Darrell Duval, Base Manager, Sudbury
Lee Anne Leo, Human Resources Business Partner
Ian McLean, Operations

HEARING: January 12, 2017

AWARD: January 17, 2017

SUPPLEMENTARY AWARD

JURISDICTION

The parties agree that I have retained jurisdiction in this matter following reinstatement of the grievor pursuant to a last chance agreement.

BACKGROUND

The grievor, Ms. Tina Lennon, hired on with the employer on January 6, 2006. While working as a Critical Care Paramedic at Ornge's base in Sudbury, Ontario, she booked unfit on October 30, 2015 on a scheduled Continuing Medical Education Day. She was later discovered by management in a local restaurant/bar and not attending the session. The grievor had a previous history of attendance issues. During the investigation, the grievor provided no explanation for her absence and alleged breach of trust, and her employment was terminated on November 11, 2015.

The original award of this arbitrator, in the matter of the grievor's initial termination from service, was issued on February 29, 2016, and is reproduced in full as follows:

A hearing in this matter was referred to me on February 26th, 2016.

The Parties, Ornge and Unifor Local 2002, have referred to me grievances addressing the termination of Tina Lennon, and the job positing competitions held by Kevin St. Amant and Carla Agnew.

I have heard the submissions made by each Party, including the Employer's alternative submissions requesting that the Grievor be placed on a "Last Chance Agreement" if the union's request to reinstate her is successful, and make the following orders.

1. Tina Lennon's termination will be substituted for a letter of suspension subject to the terms of a "Last Chance Agreement". The terms of the "Last Chance Agreement" is awarded and appended as Schedule "A"
2. Ms. Lennon shall be reintegrated into a rotational position in Sudbury but shall not be reimbursed for any back pay and the term of the suspension shall be deemed to be the period between the date of termination and the date of reinstatement subject to the terms set out in the Last Chance Agreement.
3. Subject to the successful completion of a reintegration plan, the Ms. Lennon shall be reinstated into a Rotational Position based in Sudbury.

4. Unless otherwise stipulated, the Ms. Lennon shall be deemed to have retained all service and seniority for all other purposes.
5. The postings awarded to backfill Ms. Lennon are void and to be undone. Specifically:
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SCHEDULE "A"

LAST CHANCE AGREEMENT BETWEEN

ORNGE

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UNIFOR LOCAL 2002

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3. In the event that the Grievor's employment is terminated for breaching paragraphs 4 and / or 5 above and in the event that a grievance regarding termination is lodged, any resulting arbitration case shall be limited to a determination as to whether the Grievor engaged in culpable conduct warranting any disciplinary response. Should it be established on a balance of probabilities that the Grievor engaged in disciplinable conduct, the Employer and Union hereby agree that the arbitrator will have no jurisdiction under the Collective Agreement or the *Ontario Labour Relations Act* to substitute a lesser penalty than discharge. Such penalty shall constitute a specific penalty within the meaning of the *Labour Relations Act*.
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6. The Parties may work together and with HOOPP to allow the grievor to bridge any personal contributions to which she may be eligible and willing.
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 9. This Memorandum of Agreement shall remain in effect for twelve (12) months from the date of the award.
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The grievor was subsequently returned to work on March 23, 2016.

EMPLOYER POSITION

The employer provided evidence that between her reinstatement and December 13, 2016, the grievor booked unfit for duty on seven occasions, all of which ran concurrent with her scheduled

days off. Only once did the grievor produce a medical note prior to booking off sick. Five of the seven absences occurred on the last night shift of a scheduled work cycle. As a result, the grievor was once again terminated from service on December 13, 2016 for violation of the attendance provisions of her Last Chance Agreement.

The employer maintained that the grievor demonstrated a blatant disregard for her Last Chance Agreement, failed to fulfill the promised commitment therein, and instead exhibited a wilful tendency toward patterned and culpable absenteeism. As such, termination of employment was proper and justified, and the Employer requested that the arbitrator uphold the disciplinary action.

UNION POSITION

The Union contended the grievor's absences were caused by a persistent medical condition that had been and continues to be treated by her medical provider. The Union produced evidence that the grievor's condition is now being treated effectively and is under control. While she may require medical care in the future she is now fit to return to work at this time.

The Union maintains that her manager was aware of her condition and did not request continued confirmation from her doctor. As a result, the Union argued that the Employer wrongfully terminated the grievor for culpable absenteeism despite the fact that it had no evidence to that effect, or justifiable basis for its decision. The Union requested that the arbitrator return the grievor to her position at the Sudbury base with full redress for all lost wages and benefits, and that the arbitrator also direct that she no longer be subject to the obligations of the Last Chance Agreement, scheduled to end on February 28, 2017.

DECISION

The grievor provided the Employer with a clear and detailed letter from her treating physician, on January 10, 2017. While convincing it was only provided following her termination and as evidence for this hearing. A non-refuted case has as a result been made out for a bona fide circumstance of illness, and by extension non-culpable absenteeism. However, it must be emphasized that the grievor's personal handling of her medical condition, in terms of adequate and required communication with Employer officials, was insufficient to put it mildly and irresponsible to describe it more accurately. One doctor's note does not justify repeated absenteeism while

under a last chance agreement. The position of Ornge flight paramedic requires responsible communication between paramedic and managers in order to ensure the necessary reliability of the operation.

Had she handled the situation in a generally cooperative and professional manner, it is more than likely that the termination of December 13, 2016 would not have taken place. Instead, the grievor demonstrated wanton disregard for the commitment expressed in her Last Chance Agreement, and a fundamental disrespect for the Employer. In addition, despite the guarded acceptance of the ongoing medical condition as impactful, it must be mentioned that the optics of all recent absences having occurred in concert with scheduled days off are compelling to say the least.

With a view to all of the above, the grievor will be granted one final chance to conclusively demonstrate that she is capable of answering the call as a fully committed Critical Care Paramedic with Ornge.

The grievor has attested, in no uncertain terms, that her medical condition is fully under control and that she is completely fit to meet all of the challenges of service. The Last Chance Agreement will therefore be reactivated for a further year, from February 1, 2017 to January 31, 2018. The grievor will be reinstated to her former position as soon as operationally feasible, and the time out of service since December 13, 2016 will be treated as a period of unpaid suspension.

I remain seized should there be any dispute with respect to any aspect of the interpretation, enforcement or implementation of this award.

Dated this 17th day of January, 2017.

A handwritten signature in black ink, appearing to read "Tom Hodges", written in a cursive style.

Tom Hodges
Arbitrator