

IN THE MATTER OF AN ARBITRATION HELD PURSUANT TO S. 50 OF THE *LABOUR RELATIONS ACT, 1995*:

BETWEEN:

TEAMSTERS LOCAL 847 (the Union)

AND

MAPLE LEAF SPORTS AND ENTERTAINMENT (the Employer)

RE: GRIEVANCE OF JOSEPH MCGREGOR (the grievor)

Appearing for the Union: Fernanda Santos

Appearing for the Employer: Les Fisher

Sole arbitrator: Norm Jesin

Hearing Date: March 27, 2017

AWARD:

The grievance in this case alleges that the grievor's employment was terminated by the Employer without just cause. The facts giving rise to the grievance are not in dispute.

The grievor was employed by the Employer as a busser in the Employer's food and beverage quick service concession operation. The grievor had been employed for two years at the time of his termination.

The parties have agreed to an attendance policy which is set out in article 9.05(h) of the collective agreement. That provision provides that an employee will be deemed to have been terminated if he/she "is absent for more than ten (10%) percent of his scheduled working days in a year ...". The provision further provides that an absence is not considered under the provision if a timely doctor's note is provided to establish that there is a medical reason justifying the absence. Furthermore, absences that constitute emergency leave under the *Employment Standards Act* are not considered in calculating the percentage of absences.

In the year in question (July 1, 2015 – June 30, 2016) the grievor was absent a total of 27 out of 149 events, for a total of 18.12 percent. I was informed that four of the absences were for emergency family leave. However, even if those absences are discounted the level of absence is still over 15%. The Union asks me to discount a further 5 absences for which the grievor claimed he was sick. However, the grievor never provided a supporting doctor's note or other documentation establishing his justification to be absent as required by the collective agreement. No satisfactory explanation was given as to why such note could not have been

provided. Given the wording of the collective agreement the Employer was therefore entitled to treat the absences in question as unexcused absences. I therefore find that the grievor's level of unexcused absence for the period in question exceeded the 10% threshold agreed to by the parties under the collective agreement. Given that the parties have deemed termination to be appropriate in such circumstances, I have no alternative but to dismiss the grievance. The grievance is accordingly dismissed.

Dated at Toronto, this 31st day of March, 2017

A handwritten signature in black ink, appearing to be 'NJ', is written over a horizontal line.

Norm Jesin