

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: GRIEVANCES OF LORETTA RIZZO (LR) AND SABRINO RIZZO (SR) (the grievors)

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 grievors' employment was terminated by the Employer without just cause. The facts giving rise to the grievance, which are not in material dispute, may be described as follows:

The grievors are twin sisters. They were employed as kitchen attendants in the Employer's food and beverage operation. LR has 6 years seniority and SR has 2 years seniority.

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 each of the grievors had an absentee record exceeding 16%. It was a particularly difficult year for the grievors in that both of their parents suffered from serious illness in that year and they lost a brother. Although bereavement absences were not counted on their record each of the grievors claimed that 10 of the absences should have been excused as emergency family leave under the *Employment Standards Act*. The Employer concedes that when the absences were called in they were called in as emergency family leave. The Employer states that no documentation was provided to establish the justification for

emergency leave. The Employer concedes that at the time that the absence were claimed, it did not request the grievors to provide any such documentation.

Article 9.05(h) provides that when an employee is ill, he/she must provide medical documentation supporting the absences in order for it to be considered as excused. No such requirement is placed on an employee to support a claim for emergency family leave. Given that no timely request for documentation was made, I am in agreement with the Union that 10 absences for each grievor should be treated as emergency family leave. It is therefore my conclusion that 10 of the absences should be removed from each of the grievor's calculation. In the result, neither of the grievors has an absenteeism record exceeding 10% for unexcused absences.

The grievances are therefore allowed and the Employer is hereby ordered to reinstate the grievors into their employment forthwith.

I remain seized to deal with any difficulty in implementing this award.

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

A handwritten signature in black ink, consisting of stylized initials 'NJ' followed by a long horizontal stroke.

Norm Jesin

