

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 TYLER HIGGINS (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, which are not in material dispute, may be described as follows:

The grievor was employed as a kitchen worker in the Employer's food and beverage operation and had about 5 years seniority 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.

The Employer claims that in the year in question the grievor exceeded the 10% threshold for absences set out in the collective agreement. According to the Employer his level of absence was 10.81%.

The Union asserts that two of the absences should not be counted as they were for emergency leave for an ailing grandmother. The Employer responds that it has no documentation supporting such leave.

In addition, the Union asserts that absences related to the grievor being scheduled for the Pan Am games should not be counted as the grievor was unable to obtain the necessary accreditation required to work at the event. The reason is that the grievor had had his driver's license confiscated at the time that he was to apply for accreditation and he could not obtain such accreditation without the license. In any event the Employer was aware well in advance that the grievor did not have accreditation and the Union therefore asserts that it should not be able to count such absence as an unexcused absence. The parties are agreed that if a single absence is removed from the grievor's calculation that his level of absence would fall below 10%.

Having regard to the evidence presented I am prepared that to conclude that some of the absence counted by the Employer (for example – the absences for Pan Am events) should not have been counted as unexcused absences. It is therefore my conclusion that the grievor's absenteeism record did not exceed the 10% threshold set out in the collective agreement. The grievance is therefore allowed and the grievor is therefore to be reinstated forthwith.

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

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

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

Norm Jesin

