

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 P. GNANARAVI (the grievor)

Appearing for the Union: Tom Fraser

Appearing for the Employer: Les Fisher

Sole arbitrator: Norm Jesin

Hearing Date: March 29, 2017

AWARD:

The grievance in this case alleges that the grievor was discharged from his employment from the Employer without just cause. It is the position of the Employer that the grievor had abandoned his job and should not be reinstated having regard to the surrounding circumstances. It is further the position of the Employer that the grievance is inarbitrable because he was well beyond the collective agreement time limit for filing his grievance. The facts giving rise to this dispute are as follows:

The grievor was a lead cook in the Employer's concession operation. He had 15 years seniority with the Employer. He is employed as one of what is known as "Event Staff Personnel". On or about February 7, 2015, the grievor was suspended for leaving prior to the end of his shift without permission. In the past when all work was completed employees would leave early. However, it is the Employer's position that employees could not leave work early unless they had the permission of a manager to leave. This was emphasized to the grievor when he was returned to work one week later. Nevertheless on February 17, 2015, the grievor again left work without seeking permission to leave. He did not tell anyone that he was leaving. He returned to his next shift on February 26 and was asked why he had left early on February 17. According to the Employer he claimed he left that he was told that his babysitter had suffered from a medical matter. (At the hearing the grievor claimed that it was the babysitter's mother and not the babysitter that had the medical event.) In any event, no explanation was provided as to why he did not seek permission to leave or as to why he did not inform anyone that he

was leaving. Still, the Employer sent him home and told him that he was being suspended pending investigation. He was also given an opportunity to provide some documentation confirming the medical event.

A further meeting was held on March 4, 2015 in which the grievor, a manager and the chief steward were in attendance. The grievor also had his infant child with him. The grievor was asked if he had had any medical documentation to support his leaving on February 17. He had none. The Employer did not want to complete the meeting with the grievor's child present so the grievor was sent home and he was told that a further meeting would be scheduled.

The Employer attempted to contact the grievor to arrange for a follow-up meeting but was unable to do reach him. As a result the Employer sent the grievor a registered letter indicating that it was treating him as having abandoned his job. The letter was sent on March 16, 2015 and was received shortly after that date. However, the grievor did not file a grievance until June 22, 2015, some three months after receiving the letter. When asked why the grievor waited so long to file the grievance he stated that he thought the Union was taking care of it, but there was no suggestion that he spoke to anyone in the Union asking for a grievance to be filed, or that he followed up on the matter in any timely way.

In these circumstances the Employer claimed that the grievor abandoned his job. Although it is not clear that the facts surrounding the grievor's leaving work early support such a conclusion I do think that the failure of the grievor to file a grievance for over three months after receiving his notice of termination reflects lack of intention to actively pursue reinstatement into his employment with the Employer. I should note that Article 9.11 provides

that a grievance alleging unjust discharge “shall” be filed within 10 days following notice of discharge. In my view, although I do have the authority to extend the time limits for filing a grievance where there are reasonable grounds to do so, I have not been provided with any reasonable explanation as to why the grievor waited three months to file his grievance. For these reasons I am compelled to uphold the Employer’s preliminary objection. The grievance is therefore dismissed.

Dated at Toronto this 17th day of April, 2017

A handwritten signature in black ink, consisting of stylized letters 'N' and 'J' followed by a long horizontal stroke, positioned above a solid horizontal line.

Norm Jesin