

In the Matter of an Arbitration

Between

Canadian Mental Health Association

and

OPSEU, Local 684

Grievances of Jay Nixon

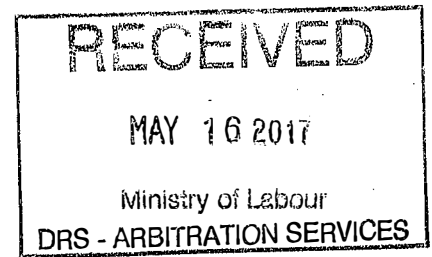
PRELIMINARY AWARD

Before: Dana Randall

For the Employer: Paul Cassan

For the Union: Dan Hales

A hearing in this matter was held on April 27, 2017 via conference call.



PRELIMINARY AWARD

I

This is a preliminary award. It addresses the Employer's motion that I dismiss two grievances filed by Jay Nixon, the Grievor. Both grievances were filed on March 5, 2015, during the first collective agreement between the parties. One alleges that the Grievor was improperly situated on the pay grid; the second that the Employer had not provided him with its benefit plan.

The Employer submits that the grievances are inarbitrable because the subject matter of both predates the first collective agreement between the parties.

II

This matter was heard by way of conference call on April 27, 2017. Various documents were filed by the parties in advance of the hearing. Both Mr. Casson and Mr. Hale made oral submissions. Mr. Nixon participated in the hearing.

III

The facts are not contested. The Employer and the Union entered into Minutes of Settlement for their first collective agreement on September 14, 2014. The term of their first collective agreement was October 10, 2014 to October 9, 2016. There was no collective agreement between the parties prior to October 10, 2014.

Pursuant to the Minutes of Settlement, it was agreed by the parties that step increases through the grid were to take place effective October 10, 2014, the first day of the collective agreement. The Grievor takes the position that his increase should be effective August 22, 2012, when he alleges that he was improperly placed on the wage grid.

As I understand the benefits grievance, the Employer, prior to the collective agreement with OPSEU, had a policy that employees with spouses who had benefit coverage (like the Grievor) were excluded from receiving benefit coverage under the Employer's own plan. That differential treatment ended upon entering a collective agreement with the Union. The benefits being sought by the Grievor all predate the collective agreement.

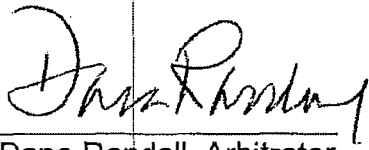
IV

Despite Mr. Hale's best efforts to convince me otherwise, I am without jurisdiction to hear these grievances. The law is well established. The general proposition is that grievances arising before a collective agreement comes into effect are not arbitrable under that collective agreement: see, amongst many others: *Reimer Express Lines Ltd. and CBRT*, 23 L.A.C. (4th) 343 (Chapman); *Mack Canada Inc. and IAM*, 2 L.A.C. (4th) (Burkett); and *Electrohome Co. and IBEW, Local 636*, 40 C.L.A.S. 500 (Kaplan).

Without dilating, while one can imagine circumstances where an arbitrator might take jurisdiction where the grievances arose under the previous collective agreement between the same parties, these grievances do not arise under a previous collective agreement. They arise prior to there being a collective agreement. As a result, the grievance and arbitrator procedure is not available to Mr. Nixon with respect to these matters and I so find.

The two grievances are dismissed.

DATED THIS 3RD DAY OF MAY, 2017 IN BARRIE, ONTARIO.

A handwritten signature in cursive script, appearing to read "Dana Randall", is written over a horizontal line.

Dana Randall, Arbitrator