

In the Matter of an Arbitration

Between

Homewood Health Centre Inc.

and

United food and Commercial Workers, Local 175

Re: Soucy Termination

SUPPLEMENTARY AWARD

Before: Dana Randall, Chair

For the Employer: Andrew W. Reynolds, Counsel
And others

For the Union: Fathima Cader, Counsel
And others

A hearing in this matter was held on April 26, 2017 in Guelph, Ontario. A conference call was convened on March 19, 2018.

SUPPLEMENTARY AWARD

1. This Award deals with the allegation, brought by UFCW, Local 175 (the Union) that Homewood Health Centre Inc. (the Employer) breached Minutes of Settlement entered into by the parties on April 26, 2017 during a hearing conducted under my auspices. The Union seeks a declaration to that effect and \$ 25,000.00 in damages.
2. The Minutes need not be set out in full. They are standard terms. It was an RPN termination case. The Employer agreed to pay a sum of money, without admitting liability, and provide the Grievor with an employment letter; the Grievor agreed to execute a Release, and an indemnification. The Union agreed to withdraw the grievance and I remain seized.
3. The provision at the centre of the dispute is paragraph 5. It reads:

The Grievor and the Employer agree not to make any disparaging Remarks about each other. The parties acknowledge that this mutual non-disparagement agreement includes any conduct or comment, whether verbal or in writing, which is intended or reasonably likely to be interpreted as disparaging of the Employee or of the Employer or the Employer's directors, officers, management, employees or clients.

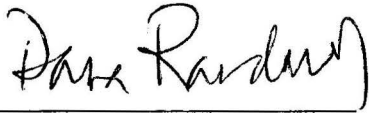
4. The Union submits that the Employer breached paragraph 5 by reporting the Grievor's termination to the College of Nurses (CNO) on December 12 or 21, 2016, which, pursuant to Article 85.5(1) of the Registered Health Professions Act, 1991, the Employer is statutorily required to do. Article 93(1) of that Act makes it an offence not to submit a report. I have great difficulty understanding how filing such a report could breach paragraph 5 and I so find.
5. But that is not the least of the Union's problems. The report to the College of Nurses was made either on December 12 or 21, 2016. (I will return to that confusion regarding dates briefly below.) The main point, however, is that the Employer's report to the CNO

predates, by many weeks, the entering into the Minutes of Settlement dated April 26, 2017. Paragraph 5 clearly intended to have only a prospective intent. There is nothing in that language to suggest that either party is warranting that it never, in the past, took a step that could be characterized as disparaging and I so find.

6. There is some dispute about when the Union and the Grievor were made aware that the Employer intended to file a report with the CNO. The Employer states that it told the Union at a grievance meeting in late November, 2016, shortly after November 21, 2016, the date the grievance was filed. While that is the best information I have before me, even if that is not the case, both the Union and the Grievor, an experienced RPN, are well aware of CNO reporting requirements. If the Employer advised the Union and/or the Grievor in late November, 2016, that is the end of the inquiry. But even if the Employer did not, the Union and/or the Grievor, pursuant to a minimum due diligence standard, were duty bound to enquire regarding same, prior to, or at the time of entering the Minutes of Settlement. Certainly, that is the standard they have to meet in order to take the position that they now do with respect to the scope of the prohibition in paragraph 5 and I so find.
7. The Union makes two bad faith arguments. The first is predicated on its view that the Employer reported to the CNO on December 21, 2016. Pursuant to Article 85.5(1) that is 5 days out of time. The Union suggests that the delay is indicative of an improper motive: less a desire to comply with the statute than an attempt to prejudice the Grievor. The second is that the Employer had not reported an earlier suspension of the Grievor to the CNO pursuant to Article 85.5(1). This too, according to the Union, was indicative of the Employer's arbitrary attitude to the statutory requirement and left open a finding that the Employer was guilty of bad faith.
8. In my view, these technical arguments have no persuasive value when juxtaposed with my findings in paragraphs 4 and 5 above. I find no bad faith in the the Employer's action of reporting the Grievor's termination to the CNO on December 21, 2016.

9. For these reasons, the Union's allegation that the Minutes of Settlement were breached by the Employer is dismissed.

DATED THIS 20TH DAY OF MARCH, 2018 IN BARRIE, ONTARIO.

A handwritten signature in black ink, appearing to read "Dana Randall", written over a horizontal line.

Dana Randall, Arbitrator