

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE UNIVERSITY OF WINDSOR

(hereinafter called the “University” or the “Employer”)

and

WINDSOR UNIVERSITY FACULTY ASSOCIATION

(hereinafter called the “Faculty Association” or the “Union”)

GRIEVANCES OF GURUPDESH PANDHER
(Grievance #'s 0973, 0974, 0983)

ARBITRATOR:

DAVID R. WILLIAMSON

REPRESENTING THE EMPLOYER:

ALBERT G. FORMOSA
SYLVAIN ROULEAU

REPRESENTING THE ASSOCIATION:

JAMES A. RENAUD

A HEARING WAS HELD IN RELATION TO THIS MATTER IN WINDSOR, ONTARIO,
BY TELEPHONE CONFERENCE CALL ON SEPTEMBER 10, 2020.

DECISION ON A PROCEDURAL MATTER

[1] On April 12, 2019, the Employer brought forward a Motion that the instant hearing of three grievances filed by the Faculty Association in relation to disciplinary measures taken by the University against Dr. Gurupdesh Pandher be adjourned or stayed pending the resolution of Dr. Pandher's Civil Claim against the University and three senior administrators of the University. The Faculty Association opposes the Motion and seeks to proceed with the instant Arbitration.

[2] The parties called documentary and *viva voce* evidence on the Motion on April 12, May 3, and May 23, 2019; scheduled the dates of September 15, 16, and 17, 2020, for argument; and booked the subsequent dates of November 19, December 10, and December 17, 2020, as further dates that could be used for continuation hearings should the Motion to Adjourn not succeed.

[3] In a telephone conference call held on September 10, 2020, Counsel for the Employer made a request to defer the dates for argument on the Motion to a later date. In support of its request Employer Counsel notified the Union and the Arbitrator that he had been informed that a very serious medical situation had just arisen in the immediate family of the Advisor to Employer Counsel, and that it was of such a grave nature that his Advisor would not be present at the September hearing dates assigned for argument. The Employer seeks an adjournment of sufficient length to enable it to find, inform on the issues, and generally 'bring up to speed' a new Advisor who can be present when argument on the Motion is made.

[4] Union Counsel responded that he had been instructed to get the proceedings moving and, for two principal reasons, to oppose this Motion to put off the dates for argument to a later time. First, because there had already been sufficient delays and deferments in getting the hearing of the grievances to this present stage. Second, because the Grievor had a right to be present at the hearing and might not be available to attend on a rescheduled date. The Grievor, it was stated, was currently out of the country and had made special arrangements to be available at the hearing in electronic format on the September dates scheduled for argument.

[5] Factors to be taken into account in considering the Employer's request to defer the dates for argument on the Motion from September to a later date include the following:

- a. The overall objective is to provide a hearing process that is fair to both parties.
- b. How soon the parties can reconvene for argument. If argument can be completed prior to the next already booked continuation date in this matter of November 19, then so much the better and the less the disruption to the flow and structure of scheduled dates.
- c. The deferment should be of sufficient duration to enable Employer Counsel to secure a knowledgeable and qualified Advisor. However, the shorter the delay the better.
- d. The Grievor is to be available on dates when the parties can reconvene.

[6] Counsel jointly advised they were of the view that two hearing days should be sufficient to complete argument and identified a number of dates both they and their clients had available in 2020 as replacement dates for those scheduled in September, namely; October 26, October 28, November 12, November 13, and December 11. The Grievor subsequently indicated he is presently available to attend a hearing on October 26, October 28, and November 12, but noted that the date of October 28 was being considered along with some other dates for a significant meeting that he must attend, but for which he was not setting the date. As such, he advised it was possible that he might not be able to attend a hearing on October 28.

[7] As Counsel for the parties were notified on September 10, 2020, having heard the submissions of the parties on the Employer's request to defer argument on the Motion from September 15, 16, and 17, 2020 to a later set of dates, the Employer's request is granted on the following basis. Submissions on the Motion will now be made by the parties on the newly scheduled hearing dates of October 26, and October 28, 2020. Should the Grievor be unable to attend on October 28, 2020, that hearing date will be cancelled and the date of November 12, 2020 scheduled in its place. The parties, counsel, and the Grievor are to hold the November 12, 2020 date in reserve for this contingency. The scheduled hearing dates of September 15, 16, and 17, 2020 are hereby cancelled.

[8] This will confirm that Counsel for the parties are to provide the Arbitrator with a written submission and copies of the case law to be referenced no later than the close of business the day before the submission is to be made. The written submission is to contain, at a minimum, the framework and the bones of the argument to be made in addressing the Motion.

[9] The previously scheduled hearing dates of November 19, December 10, and December 17, 2020, remain in place.

DATED AT LONDON, ONTARIO THIS SIXTEENTH DAY OF SEPTEMBER, 2020.

David R. Williamson

DAVID R. WILLIAMSON
ARBITRATOR