

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TEAMSTERS LOCAL UNION 847 (the Union)

AND

MAPLE LEAF SPORTS AND ENTERTAINMENT (the Employer)

Concerning the grievance of Terry-Ann Isaac (the grievor)

Appearing for the Union: Jeff Snow and others

Appearing for the Employer: Les Fisher and others

Sole Arbitrator: Norm Jesin

Hearing Date: May 15, 2018

AWARD:

The grievance in this case alleges that the grievor's employment was terminated without just cause, contrary to the collective agreement between the parties. The Employer asserts that the grievor was terminated because her absenteeism exceeded 10% of her scheduled shifts.

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 grievor had been employed as a concierge at the Air Canada Centre for approximately four years at the time of her discharge. In or about January 9, 2017, the grievor was informed by letter from the Employer that for the period commencing July 1, 2016 her absenteeism record exceeded 10% (10.53%). She was reminded that if her record of absenteeism continued to exceed 10% for the year ending on June 30, 2017, she would be subject to automatic termination under the provisions of the collective agreement.

Notwithstanding that letter the grievor's record of absenteeism continued to deteriorate and reached a level in excess of 13% by the end of June, 2017. At no time during this period did the grievor offer any medical documentation regarding these absences, nor did the grievor seek

authorization to take an emergency leave day for these absences. Indeed, for many of the absences, no supporting reason was given. As a result, the grievor was terminated in accordance with the provisions of Article 9.05(h) by letter dated July 17, 2017.

After the grievor was discharged the grievor informed the Employer that she had obtained a letter from her doctor indicating that she was absent from work “due to medical reasons” on the following dates: December 28, 2016, January 21, 25, February 14, 23, 25 and 27, 2017. The letter was purported to be dated March 10, 2017. In addition it appears from the letter that it was not signed by the doctor himself but rather that the signature was attached above the Doctor’s name “per” someone else.

At the hearing the grievor acknowledged that she may not have seen the doctor specifically for each illness referred to in the letter. Indeed, she indicated that on some of the dates indicated she may have been ill herself and on some of the dates indicated she may have been attending to a sick child, rather than being ill herself.

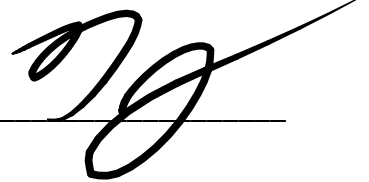
It is clear from the information given to by the grievor at the hearing that the grievor was unable to provide the Employer with credible information in a timely fashion to support an excusable reason for absence from work for the dates indicated. It is not disputed that if an employee establishes in a timely manner that he/she is ill or that she must attend to a sick child or other member of the family, that the resulting absence must be excused. However, an absence will not be excused if the employee provides no reason or information to support the absence. In this case the first documentation to support the absences in question was not provided until approximately six months after the absences and after the grievor’s employment was

terminated. Furthermore, the documentation from the Doctor clearly is inconsistent with the grievor's own evidence given at the hearing that she was not ill on all the dates indicated.

In all the circumstances I find that the Employer was justified in treating the absences as unexcused absences. Furthermore, the parties have agreed that where an employee's unexcused absences exceed 10% in a year, as they do in this case, then the employee is deemed to have been terminated. An arbitrator has no authority in these circumstances to substitute a lesser penalty.

For these reasons I find that the grievor must be considered to be deemed to have been terminated pursuant to Article 9.05(h) of the collective agreement. Accordingly, the grievance is therefore dismissed.

Dated at Toronto, this 22nd of May, 2018.

A handwritten signature in black ink, appearing to be 'Norm Jesin', written over a horizontal line.

Norm Jesin