

IN THE MATTER OF AN ARBITRATION

(Under the *Labour Relations Act*, 1995)

BETWEEN:

TORONTO HYDRO

("Employer")

-AND-

POWER WORKERS' UNION, CUPE LOCAL 1000

("Union")

AND IN THE MATTER OF an arbitration of the grievance of Victor Constancio dated February 9, 2018 (Grievance No. 2018 005) under the collective agreement between the parties.

BEFORE: G. T. SURDYKOWSKI – Sole Arbitrator

APPEARANCES:

For the Employer: Sven Poysa, Counsel (and others)

For the Union: Lindsay Lawrence, Counsel (and others).

HEARING HELD IN TORONTO, ONTARIO ON JUNE 15 AND NOVEMBER 20, 2018.

AWARD - PRODUCTION

1. This is an accommodation grievance. The Union claims that the Employer's treatment of the grievor's accommodation issues violates the collective agreement and the Ontario *Human Rights Code* (the "Code"). The Employer denies that it has violated either the collective agreement or the Code.
2. Certain of the grievor's medical records, including Reports of Independent Medical Examinations conducted at the request of the Employer with the cooperation of the Union and the grievor, have been produced. The Employer seeks additional production of medical information; namely, records relating to the grievor kept by Toronto Hydro Health Services. I understand that Toronto Hydro Health Services operates as a substantially self-contained unit which holds private employee medical information confidential except to the extent that disclosure is required for the Employer's legitimate purposes or as required by law. I understand that the grievor, and therefore the Union has some access to the records maintained by Toronto Hydro Health Services, but that the Employer's access to these records is severely restricted, including for use in legal proceedings.
3. The Union objects to the Employer's production request, essentially on the basis that sufficient medical information has been produced and the further production sought is not necessary.
4. Upon considering the parties' submissions at the hearing on November 20, 2018 and reviewing the medical records already produced, I am satisfied that the Employer's request must be granted. As complete a relevant medical evidentiary record as possible is required in order that the issues raised in a disability accommodation case (which this is) are properly determined, and I am satisfied that the records kept by Toronto Hydro Health Services are arguably relevant both generally, and necessary to inform my understanding on the medical records that have already been produced. In that respect, I note that the Reports that have been produced identify medical documentary records apparently from Toronto Hydro Health Services which were referenced by the medical health professionals who prepared the Reports. Further, the Union itself suggests there are some arguable inconsistencies in the Reports already produced. I am satisfied that it is necessary and in the interests of fairness and justice to grant the Employer's production request.
5. Accordingly and pursuant to my authority under the collective agreement and the Ontario *Labour Relations Act, 1995*, **I ORDER** Toronto Hydro Health Services to produce true copies of all of the records relating to the grievor, whether medical or

otherwise, that are in its possession, power or control for the period May 1, 2016 to November 20, 2018 to counsel for the Employer (Mr. Poysa) and counsel for the Union (Ms. Lawrence). **I ORDER** production to be made to both counsel at the same time forthwith and in any event by no later than December 3, 2019.

6. **I ORDER THAT** any document or other record, or the contents thereof, received by counsel from Toronto Hydro Health Services pursuant to the Production Order herein be held confidential and not be disclosed to anyone, other than co-counsel and necessary for purposes of the proceeding advisers, without leave. **I ORDER THAT** any co-counsel or adviser to whom disclosure is made as permitted herein is prohibited from disclosing anything about or contained in the records which they become privy to herein to anyone not already also privy to them, also without leave.

7. **I ORDER THAT** any Toronto Hydro Health Services document or record, or any of the contents of any Toronto Hydro Health Services document or record produced pursuant to the Production Order herein may not be used for any purpose not related to this grievance arbitration proceeding.

8. Counsel for the Employer has indicated that he may seek further production of medical records after he has had the opportunity to examine the records kept by Toronto Hydro Health Services to be produced. **I ORDER THAT** the Employer and the Union must make any further production requests by no later than December 24, 2018.

9. Any further production or particulars issues must be resolved in a timely way before the next scheduled hearing date (February 19, 2019). I will deal with any disputes in that respect by telephone conference call or on the basis of brief written submissions, as appears to me to be appropriate and convenient.

10. **I ORDER THAT** the timelines for production herein may be altered on consent or with leave.

11. **I ORDER THAT** the parties be otherwise prepared and able to proceed with the hearing on the merits on February 19, 2019.

DATED AT TORONTO THIS 22nd DAY OF NOVEMBER 2018.

George T. Surdykowski.
George T. Surdykowski – Sole Arbitrator