

IN THE MATTER OF AN ARBITRATION

BETWEEN

Toronto Community Housing Corporation

("Employer")

and

Canadian Union of Public Employees, Local 79

("Union")

Grievances of Tanya Foster: T17-01-0001; T18-06-0018

SOLE ARBITRATOR: James Hayes

APPEARANCES

For the Union

Douglas J. Wray, Counsel
Janet McIvor, CUPE National Representative
Dave Colosimo, Unit Officer
Tanya Foster, Grievor

For the Employer

Kathryn Bird, Counsel
Vishnu Ramsamujh

A hearing was held in Toronto on September 5, 2018.

DIRECTION

1. The Union brings a 'denial of promotion' grievance followed by a second challenging Ms. Foster's subsequent termination from employment.
2. Both grievances were referred to this arbitration.
3. The Employer has requested a procedural direction having regard to overlapping facts and legal issues relating to these grievances and Human Rights Tribunal of Ontario ("HRT0") File 2017-30650-I. The overlap was explained in general terms at the hearing. There is no dispute about it and no need that it be described herein.
4. The HRT0 matter is scheduled for hearing on February 8, 2019. There are a series of disclosure deadlines concerning that file that have immediate effect.
5. Counsel provided a very basic description of the current legal situation. They agree, for obvious reasons, that it is not practical for the arbitration and HRT0 proceedings to take place simultaneously.
6. In the circumstances, the parties agree that it makes labour relations and procedural sense that the Grievor select one of the following options set out below.
7. Ms. Foster was present throughout the hearing and expressed her agreement with the approach and time line for selection set out below.
8. The parties agree that the Grievor should have an opportunity to seek the advice of her personal counsel before selecting an option. The Union is not a party to the HRT0 proceeding.
9. This Direction confirms what was discussed and outlined at the hearing.

10. By no later than September 19, 2018, the Grievor is directed to advise the Union as to her choice of one of the following four procedural options.

- i. Proceed with both the arbitration and the HRTO proceedings.

If this option is selected, the HRTO matter will proceed first and the arbitration will be adjourned.

- ii. Amend the HRTO application.

Any aspect of the HRTO application germane to the grievances would be withdrawn from that application. Any remaining element of the HRTO application could then proceed at the same time as the arbitration.

The Employer would consent to any required amendment to the HRTO application.

- iii. Withdrawal of the termination grievance.

If this option is selected, the HRTO application could be appropriately amended.

- iv. Withdrawal of the HRTO application on agreement that any issues raised therein would proceed instead in this arbitration.

Dated at Toronto, Ontario this 6th day of September, 2018.


James Hayes