

**IN THE MATTER OF A GRIEVANCE ARISING
PURSUANT TO A COLLECTIVE AGREEMENT**

BETWEEN:

PORT PERRY PLACE

("the Employer")

-and-

ONTARIO NURSES' ASSOCIATION

("the Association")

AWARD

1. On July 18, 2017 the parties attended a proceeding before me to deal with a grievance filed by the Association on behalf of a member (ONA Case #201703546). The parties and the Grievor engaged in mediation and ultimately a settlement of the grievance was achieved. One of the terms of the Minutes of Settlement required that a payment be made to the Grievor within twenty-one (21) days of the mediation date. A further term of the Minutes had me remain seized with the matter.
2. Subsequently, I was advised through emails between the representatives of the parties that the required payment was not made within twenty-one (21) days of the settlement. On the day following the due date for payment, the Association contacted the Employer by email, with a copy to me, and advised of the default. It was not stated that the delay was the cause of financial difficulty for the Grievor. On the day following that notice (i.e. the twenty-third day following settlement), payment was made.
3. Subsequently, the Association requested that a declaration that the Minutes of Settlement had been breached be issued together with an order for interest based on an annual rate of 10%. The Employer responded with an apology and stated that the delay had been the result of vacation and illness affecting those responsible for dealing with the payment.

4. In turn, I emailed the parties noting that the post-judgment rate of interest pursuant to the *Courts of Justice Act* was then 2% and that I understood this would generate an interest payment of \$0.28 in these circumstances. I further asked whether the Association wished to pursue the matter given the apology and explanation tendered by the Employer.
5. The Association advised that it wished to pursue the matter. The Employer subsequently advised me that it is not formally contesting the issue.
6. There is a real question as to whether a declaration or remedial relief is appropriate in these circumstances. While there can be no question that the Employer violated one of the terms of settlement, once advised of the issue it immediately and completely addressed the default. The Employer has candidly acknowledged the default, apologized for the error and offered an explanation. This is not a case in which the Employer was obdurate, obstructionist or tried to avoid its obligations. Administrative errors do occur in all workplaces from time to time and, when isolated and of relatively minor import, generally should not be made matters of contention.
7. Ultimately, I am persuaded that it is the Employer's decision not to contest the Association's request that should be determinative of the issue. It is my understanding that the Employer's decision is rooted in a desire to foster good labour relations between the parties by avoiding the treatment of this issue as a contested matter. I commend the Employer for taking that course of action.
8. Accordingly, I declare that the Employer was in violation of the Minutes of Settlement between the parties, as noted above. I decline to issue an order for the payment of interest, invoking the principle of "*de minimis non curat lex*".

DATED this 1st day of September, 2017.

A handwritten signature in black ink, appearing to read 'C White', with a stylized flourish extending from the end.

Christopher C. White