

IN THE MATTER OF AN ARBITRATION

BETWEEN

London Health Sciences Centre

("Hospital")

and

Ontario Public Service Employees Union, Local 106

("Union")

Grievance of Shannon Henry

SOLE ARBITRATOR: James Hayes

APPEARANCES

For the Union

Mihad Fahmy, Counsel
Steve McCann, Local President
Lynne Easter, Staff Representative
Shannon Henry, Grievor

For the Hospital

Brian O'Byrne, Counsel
Angela Hodgson, Director

A hearing was held in London, Ontario on January 29, 2019.

AWARD

1. The parties agreed that this matter should be resolved in what has become known as a 'Section 50' type format. The parties met separately with the Arbitrator and their competing positions were communicated to each other informally.

2. The dispute arises from a notice of layoff that had been given to the Grievor. That issue was resolved in a detailed, without prejudice and precedent, Letter of Understanding dated July 16, 2015 ("LOU").

3. As required by the LOU, the Grievor was transferred into a vacancy for Lab Assistant III in Specimen Receiving. However, the LOU provided for her classification as Lab Assistant II and payment at that rate.

4. The LOU at paragraph 3 stated that:

Shannon Henry will be classified as a Lab Assistant II and will be paid at the Lab Assistant II rate of pay effective her transfer to Specimen Receiving on September 4, 2015. NOTE: This classification and rate of pay is in accordance with the terms of the Arbitration Award related to Laboratory Assistant Wage Rates signed on April 1, 2008 (Kevin Burkett, Arbitrator). The Award incorporated a Memorandum of Agreement reached by the parties. ("MOA")

5. The LOU also stated that: "Shannon Henry will be reclassified to the Lab Assistant III classification and wage grid when she presents proof, satisfactory to the hospital, of certification with either CSMLS or OSMT as a Medical Laboratory Assistant.

6. The parties and the Grievor complied fully with the LOU. Accordingly, Ms. Henry is now classified as a "Tech 3".

7. The grievance alleges that Ms. Henry should have been placed at the top level of the Tech 3 grid effective February 23, 2017.

8. The Union argues that the following paragraph in the MOA – not the LOU - governs this dispute:

In the event an employee currently classified as a Laboratory Assistant ii obtains her or his CSMLS or OSMT certification on or before March 31, 2009, that employee will then be reclassified as a Laboratory Assistant III under the Technician III category and will be paid the Technician III rate of pay effective the date she/he obtains her/his CSMLS or OSMT certification provided that this occurs on or before March 31, 2009.

9. The Hospital relies upon Article 13.08 of the Collective Agreement that includes the following:

An employee who is promoted to a higher rated classification within the bargaining unit will be placed in the range of the higher rated classification so that he shall receive no less an increase in wage rate than the equivalent of one step in the wage rate of his previous classification (provided that he does not exceed the wage rate of the classification to which he has been promoted).

10. Notwithstanding Union counsel's careful explication of the Grievor's position, because it occurred years later, the settlement of the Grievor's earlier layoff dispute obviously had nothing to do with the specific facts that led to that MOA. Paragraph 5 of the MOA is time limited. The Grievor is not identified in either Schedule of names appended to the MOA.

11. Insofar as the LOU is concerned, it is noteworthy that paragraph 3 - that does include a reference to the MOA - speaks only to the rate of pay that the Grievor was to receive in the Lab Assistant II classification. It says nothing about what her subsequent rate of pay should be.

12. In these circumstances, I conclude that Article 13.08 of the Collective Agreement directs what Ms. Henry should have properly received when she moved up to the Lab Assistant III classification.

13. I understand that there is no dispute that the Grievor was properly compensated having regard to the requirements of Article 13.08 and, therefore, the grievance must be dismissed.

Dated at Toronto, Ontario this 8th day of February, 2019.


James Hayes