

IN THE MATTER OF AN ARBITRATION

BETWEEN

ORNGE

("Employer")

and

Ontario Public Service Employees Union

("Union")

Grievance of Lynn Adams

SOLE ARBITRATOR: James Hayes

APPEARANCES

For the Employer

Kathryn Bird, Counsel

For the Union

Jane Letton, Counsel

A hearing was held in Toronto on May 21, 2019.

AWARD

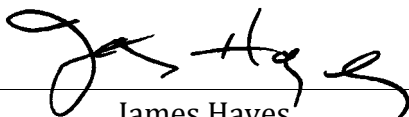
1. This matter concerns five grievances dated May 5, 2016 alleging discrimination and harassment contrary to statute and various provisions of the Collective Agreement. I am advised that a same-date complaint was also filed with the Human Rights Tribunal of Ontario.
2. The Union brings a motion for an adjournment. The Employer seeks dismissal on the basis of abandonment.
3. This proceeding has a history.
4. It was previously scheduled on September 29, 2016 for a hearing on April 4, 2018. That date was adjourned on an Employer motion following a conference call held on March 23, 2018. The Union was directed to “provide particulars of the grievances in issue as soon as possible supported by production of relevant documents”.
5. On May 24, 2018 a further hearing was scheduled for May 21, 2019.
6. A formal notice of hearing was not provided to the Grievor through inadvertence in the office of counsel. However, it is clear that the Grievor was aware of the May 21, 2019 date. She was copied on a letter from Ms. Bird dated October 29, 2018. She was sent an e-mail by her own counsel on April 2, 2019 that, again, identified the date. She then initiated contact with Ms. Letton’s office on the Friday before the long weekend to advise that she could not attend the Tuesday hearing as she was in the United States undergoing training with another employer. The Grievor had previously resigned her employment with ORNGE on October 18, 2017.
7. The Union seeks an adjournment on the basis of “misunderstanding”. It referred to *Beacon Hill Lodges Inc.* (1990), 15 L.A.C. (4th) 323 and *Budget Car Rentals*

(2000), 87 L.A.C. (4th) 154 (Davie). The Employer filed the following authorities: *Hilton Toronto*, [2010] O.L.A.A. no. 109 (Kaplan); *Ontario Liquor Control Board*, [2008] O.G.S.B.A. No. 118; *Sobey's Milton Distribution Centre*, [2002] O.L.A.A. No. 595 (Tims). It points out that the limited particulars it has received so far date back to 2012 and that the Employer will be prejudiced by further delay given that witnesses have left its employment and that memories will have faded. Not all documents have been retained.

8. In all of these circumstances I conclude that no further adjournment should be granted. The hearing was scheduled a year ago. The Grievor has resigned her employment. There is no question that she was aware of the hearing date. Both Employer and Union counsel had advised her of the date in writing. She contacted Union counsel on the business day before the hearing to advise that she would not be in attendance. Her understandable priority was to attend training with her new employer in the United States. However, while this choice was hers to make, she is not entitled to require last minute rescheduling with all of the attendant costs to both institutional parties. I have also taken into consideration the Employer's concerns about prejudice. Given the passage of time those concerns may be presumed to be legitimate.

9. The grievances are dismissed.

Dated at Toronto, Ontario this 22nd day of May, 2019.


James Hayes