

IN THE MATTER OF AN ARBITRATION

BETWEEN:

**Ontario Nurses Association
(The "Union")**

-and-

**Central East Local Health Integration Network
(The "Employer")**

CONCERNING Grievance No. 19-02

Ian Anderson, Sole Arbitrator

For the Union:

Alison Dover, Legal Counsel
Alison Carre, Labour Relations Officer (Servicing)
Joshua Legere, Bargaining Unit President
The Grievor

For the Employer:

Braden MacLean, Counsel
Vicki Bone, Senior Manager, HR Operations
Matthew Vrooman, Director, HR Strategies

Hearing held in Peterborough, Ontario, August 27, 2019.

Award issued August 28, 2019.

1. On the agreement of the parties, the identity of the Grievor has been omitted.
2. The Grievor resigned her employment on February 5, 2019. On February 20 2019 she sought to rescind her resignation. The Employer did not permit her to do so. The grievance before me alleges that in refusing to permit her to rescind her resignation, the Employer contravened, *inter alia*, of the Ontario *Human Rights Code*.
3. The parties agreed the mediation-arbitration provisions set out in section 50 of the Ontario *Labour Relations Act*, 1995 would apply to these proceedings. Attempts to resolve this matter through mediation were unsuccessful. The facts which I consider material to the determination of the issue before me were not in significant dispute.
4. Having considered the representations of the parties, I find that due to disability the Grievor was incapable of forming the subjective intention to resign her employment on February 5, 2019. Her resignation is therefore set aside. I see no basis, however, for finding the Employer's refusal on February 20, 2019 to permit her to rescind that resignation (which I have now found to be ineffectual) was contrary to the *Human Rights Code*.
5. I find the Grievor is not eligible for sick leave pursuant to Article 20.02 for the period February 5, 2019 to the date of this award as she did not meet the requirement of having returned to active work for one complete month after her previous sick leave. I find, the Grievor is, however, eligible to apply for the Long Term Disability coverage established by Article 20.09. The Grievor incurred \$120 in expenses which might be covered by the Extended Health Insurance Plan or Dental Insurance Plan for the period February 5, 2019 to the date of this award. I remain seized with respect to any other remedial issues.
6. The Grievor is not currently able to work. Prior to returning to work, the Grievor shall provide the Employer with reasonable notice of her desire to do so. When providing notice, the Grievor shall provide:
 - (i) Proof of current membership in the College of Nurses, with no relevant restrictions on her license to practice which cannot be accommodated pursuant to the Human Rights Code; and

- (ii) Medical certification that she is fit to return to work.

The Employer may require the Grievor to attend an Independent Medical Examination to establish current fitness to work prior to her returning work. The medical professional conducting the examination will be chosen in accordance with the procedure set out in the Letter of Understanding to the Collective Agreement.

- 7. I remain seized with respect to any issues relating to the interpretation or implementation of this award.

Signed this 28th day of August, 2019.

"Ian Anderson"

Ian Anderson

Arbitrator