

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TEAMSTERS LOCAL UNION 847 (the Union)

AND

MAPLE LEAF SPORTS AND ENTERTAINMENT (the Employer)

Concerning the grievance of Mariah Squire (the grievor)

Appearing for the Union: Fernanda Santos

Appearing for the Employer: Les Fisher

Sole Arbitrator: Norm Jesin

Hearing Date: October 7, 2019

AWARD

The grievance before me alleges that the grievor was discharged for her employment without just cause, contrary to the provisions of the collective agreement. The facts giving rise to the grievance are as follows.

The grievor was employed as a part time employee at the Employer's Real Sports restaurant. At the time of her discharge she had two years seniority.

Under the Employer's absenteeism policy employees are able be absent without any justification for up to 10% of their scheduled shifts without penalty. However, if they miss more than 10% of their shifts in a one-year period between July 1 and June 30 in any year they are deemed to be terminated from employment. Medically supported absences are not counted toward the absentee calculation nor are any personal emergency days they are entitled to under the Employment Standards Act. In January of each year an employee who appears to be heading toward a 10% absenteeism rate is given a warning so that in the second half of the year they may bring their record back down below 10% before the end of the next June. The Employer's policy mirrors absentee provisions that the parties have agreed to in other collective agreements and the policy has not been challenged by the Union.

The grievor was terminated because in the year from July 1, 2017 to June 30, 2018 her absenteeism rate was 18.46%. The grievor maintains that this resulted from the fact that during the first half of that year she was studying for her CPA degree while also carrying on a full time job (which she still has). When she received the usual warning letter she improved her

attendance, but was unable to reduce her absentee record below 10%. She also claims that in the first half of the year she tried to change her scheduled availability but the Employer did not agree to do so. She did not advise the Employer that she was studying for school nor did she ask the Employer for a leave of absence.

The Employer tried to see if it could reduce the level of absences below 10% by treating the maximum allowable absences as personal emergency days (the grievor had not asked it to do so at the time) but even with that the absentee record was still above 10%.

The Employer asserts that the policy is a fair policy which allows the employees to be absent without having to justify the absences for up to 10% of their shifts but that the Employer cannot tolerate absences beyond that level. The Employer also notes that the employee is given every opportunity to ensure that the record of absence is below 10%. Finally, the Employer notes that the policy has been accepted by the Union.

The Union does not dispute any of the above, but the Union asks that in the unique circumstances in which the employee was simply trying to “better” herself the policy should not be applied.

I agree with the Employer that the policy does offer employees built in flexibilities to allow employees to pursue other commitments and still maintain part time employment with the Employer. However, it may be that because of the extent of other commitments, the employee may not be able to maintain the required level of attendance required as a part time employee with the Employer. The policy that is in place has been accepted in this workplace as well as in other workplaces in which the Union holds bargaining rights with the Employer. I find that the

policy is a reasonable one and was reasonably applied in this case. As a result, the termination of the grievor in accordance with the policy was reasonable and justified in the circumstances.

Having regard to the foregoing, the grievance is dismissed.

Dated at Toronto, this 15th day of October 2019.

A handwritten signature in black ink, consisting of stylized initials 'NJ' followed by a long horizontal stroke, positioned above a solid horizontal line.

Norm Jesin