

IN THE MATTER OF AN ARBITRATION

BETWEEN

UNIVERSITY HEALTH NETWORK
(WOMEN'S OWN WITHDRAWAL MANAGEMENT CENTRE)
(“the Hospital” / “the Employer”)

- AND -

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 5001
(“the Union”)

CONCERNING THE INDIVIDUAL GRIEVANCE of Z.H. (“the Grievor”)
File #ED-12-09-19-ZH
Ministry of Labour File #10320-XR-19

Christopher Albertyn - Sole Arbitrator

APPEARANCES

For the Union:

Wassim Garzouzi, Raven, Cameron, Ballantyne & Yazbeck LLP

For the Employer:

Andrew Zinman, Minden Gross LLP

Conference call held on November 5, 2019.

Procedural Award issued on November 5, 2019.

PROCEDURAL AWARD

1. This procedural award concerns a grievance filed by Z.H. I understand from Union counsel that the grievance alleges that the Employer has failed to return the Grievor to work, despite the Grievor being fit to do so.
2. Counsel for the Employer explains the Grievor has not been returned to work because the Hospital's Occupational Health unit (OH), which advises the Hospital on employee health issues, is not yet satisfied of the Grievor's fitness to return to work. In particular, the OH has requested certain clarification from the Grievor's doctor concerning the Grievor's health, but that clarification has not been forthcoming from the Grievor's doctor. In the OH's view, until that clarification is received, it cannot confirm the Grievor's fitness to return to work.
3. The Grievor's medical records for 2019 in the possession of the OH (the medical records), which includes all correspondence between the Grievor and her doctor and OH, are arguably relevant to the issues to be determined in the arbitration.
4. The arbitration is due for hearing on Monday, November 18, 2019.
5. No production of arguably relevant documentation has yet taken place between the parties.
6. There are two interests regarding the production of the medical records. One is that parties are entitled to see all relevant documents so that they could fairly present their best cases. The other is the Grievor's privacy interest regarding the information contained in the medical records. That information belongs to the Grievor. In reconciling these competing interests, there must be a reasonable balance between production of the medical records as arguably relevant documents and the Grievor's privacy interest. That balance has been described in

Ontario Public Service Employees Union and the Crown in Right of Ontario (Ministry of Community Safety and Correctional Services), 2019 CanLII 21739 (Gee) and in *Niagara College v Ontario Public Service Employees Union, Local 242*, 2019 CanLII 54739 (ON LA) (Stout), among other cases.

7. The balance is struck in the case by the following order regarding production of the medical records:

- a. OH must produce the Grievor's medical records forthwith. That production is to be done as an attachment by email to both the Employer's and the Union's counsel at the same time, and to no-one else.
- b. Employer counsel is required to forthwith bring the above order to the attention of OH.
- c. The medical records so produced are to remain confidential and are to be subject to the following confidentiality conditions.
 - i. The medical records are to be kept confidential by each person described herein;
 - ii. Counsel for each party may share the medical records with a maximum of two advisors each (in the Hospital's case, with counsel's Employee Relations adviser and counsel's Labour Relations adviser) and, if necessary, with a third-party external medical consultant, subject to the medical records being kept confidential;
 - iii. No copies are to be made of the medical records, except for the purpose of the hearing of the grievance;

- iv. No copies of the medical records are to be circulated to third parties, save to a medical expert retained as necessary for the conduct of the litigation, as mentioned above. Once that purpose is completed, the copies are to be retrieved from the third-party medical expert;
- v. The medical records are to be used only for the purposes of this hearing and for no other purpose. Specifically, the medical records are not to be used in any other proceeding and are not to be shown or provided to any other party or person once the hearing is completed;
- vi. All copies of the medical records are to be returned to the OH or destroyed at the conclusion of this proceeding and any judicial review proceedings arising from this proceeding, save for one copy to be retained by each counsel in their file; and
- vii. No personal information contained in the medical records, and in particular no medical information found in any document, shall be disclosed to any person except for the purposes of this proceeding, or as required by law.

8. Upon receipt of the medical records by Union counsel, the Union is to produce any further arguably relevant documents to Employer counsel by Monday, November 11, 2019.

9. The Employer is to produce all arguably relevant documents in its possession to Union counsel by Friday, November 15, 2019.

10. The matter will proceed on Monday, November 18, 2019.

11. I am seized of the arbitration of the grievance.

DATED at TORONTO on November 5, 2019.

A handwritten signature in blue ink, appearing to read 'C. Albertyn', with a horizontal line extending to the right.

Christopher J. Albertyn
Arbitrator