

IN THE MATTER OF AN ARBITRATION
BETWEEN:

ELIZABETH FRY SOCIETY

(The "Employer")

AND

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 518

(The "Union")

AND

LYDIA YANG

(The "Grievor")

AND IN THE MATTER OF A GRIEVANCE RELATING TO:

LYDIA YANG - 2018-0518-0002

JANICE JOHNSTON - SOLE ARBITRATOR

APPEARANCES:

For the Employer:	Peigi Ross	Counsel
	Kelly Potvin	Executive Director

For the Union:	Jane Letton	Counsel
	Lydia Yang	Grievor

A hearing in this matter was held in Toronto on July 30, 2019

DECISION

The grievance in this case alleges harassment. It reads as follows:

Statement of Grievance

I grieve that under Article(s) 2, 3, 8, 21 and under the respectful workplace communication policy, the Employer has violated my rights when they fail to resolve to my satisfaction a complaint made against me that I was racist. I further grieve that the employer continues to bully, harass and contribute to a poisoned work environment when it fails to uphold the policies and practices of the Collective Agreement and bill 168.

Settlement Desired

1. Make the employee whole and any and all other remedies as appropriate under the Labour Code
2. Any and all other remedies deemed fair by the arbitrator

At the hearing scheduled to deal with this case, in accordance with my authority pursuant to the Labour Relations Act, I directed the parties to come to an agreed statement of fact. The parties were able to do so and the agreed to facts are as follows:

1. The Grievor is an MSW and is employed as a Counsellor.
2. In or about February 2018 the Grievor booked a conference room for purposes of an anger management group.
3. The boardroom was booked that same day for an event celebrating Black History month. The organizer of the event was Lemoi Peters, a black racialized employee.
4. The Grievor learned of the double booking, and allegedly loudly stated, "you people are always doing this". Ms. Peters complained.
5. The Grievor denies that she made the statement referenced in paragraph 4 herein.
6. Ms. Peters, in the context of the Black History month event and her own experiences as a black woman, believed that the statement was racial in nature. Ms. Peters complained about the statement.
7. The Employer commenced an investigation into the complaint as required in accordance to the Employer's legal obligations under the

Occupational Health and Safety Act, the Human Rights Code and the Employer's Workplace Violence and Anti-Harassment Policy Complaints Resolution Procedure for Employees (attached).

8. The investigation determined that there was no discrimination or discriminatory intent on the part of the Grievor, and that Ms. Peters had misunderstood the comment made by the Grievor. All parties were advised of the foregoing.

9. Ms. Peters accepted the outcome of the investigation.

10. The parties engaged in a mediation to attempt to resolve any remaining workplace issues. The mediation was unsuccessful.

11. The Grievor was provided with a draft letter from Ms. Peters. The letter was rejected by the Grievor. The letter stated in part as follows:

"The mediation arose from a complaint I made regarding comments I thought you made on the day of our Black History Celebration. I feel confident Kelly did a thorough investigation, and I can acknowledge that she found no racist comments were made by you."

12. The Grievance was filed in or about March 2018.

It is clear in this case that there has not been any violation of the collective agreement, or any employment based statute such as the human rights code. Upon receipt of the complaint, the employer, as it is obliged to do, conducted an investigation. The grievor is not satisfied with the investigative process or the results. Hence the grievance.

However, I am of the view that in all of the circumstances it was appropriate for the employer to conduct an investigation. As a result of the investigation, the grievor was exonerated and no discipline flowed from the investigation. Therefore, it serves no further labour relations purpose to inquire further into this matter.

Accordingly, the grievance is hereby dismissed.

In the event that the parties have any difficulty with the interpretation or implementation of this decision, I shall remain seized.

Dated in Toronto this 18th day of November, 2019

“Janice Johnston”

Arbitrator