

IN THE MATTER OF AN ARBITRATION

BETWEEN:

**Canadian Union of Public Employees, Local 2974.0
(The "Union")**

-and-

**Essex County Library Board
(The "Employer")**

CONCERNING Grievance of AAA

Ian Anderson, Sole Arbitrator

For the Union:

Robert Church, Counsel

For the Employer:

David Amyot, Counsel

Hearing held by conference call February 14, 2020.

Award issued February 25, 2020.

1. The Union alleges the Employer has breached the confidentiality provision of minutes of settlement reached between the parties in this matter. By way of remedy, it seeks to have the grievance proceed on the merits.
2. Given the confidentiality provision in the minutes of settlement, I have omitted the name of the Grievor and will be circumspect in my reasons.
3. The grievance arises from a harassment complaint filed by the Grievor. It was and is common ground that both the Union and the Employer have responsibilities to ensure the workplace is free from harassment. The Employer, however, disputed (and disputes) the Union's allegation that the conduct in question constituted harassment. Notwithstanding this dispute, the parties were faced with the Grievor's complaint of harassment which needed to be resolved either through settlement or arbitration.
4. The parties appropriately and sensibly engaged in a mediation process. The Grievor indicated a willingness to be transferred to another position. The Employer indicated the incumbent of the other position (the "incumbent") would need to be transferred into the Grievor's position. The Union contacted the incumbent, advised her of the existence of a "harassment issue" not involving her and the proposal that she be transferred. I understand the incumbent indicated she would be prepared to be transferred. The parties then entered into minutes of settlement which provided for the transfer.
5. The next day, first thing in the morning, the incumbent sent an email to a member of management asking if they had "heard anything about yesterday's arbitration" and referred the fact that she had been told "I am being switched hubs as a solution to someone else's harassment complaint". At the end of the day, the CEO of the Employer responded indicating the "transfer of your position ... was part of a grievance settlement".
6. The Union alleges the statement by the CEO, although innocently made, breaches the confidentiality clause of the minutes of settlement. The Employer states the statement was part of the "necessary step(s) to effect the Grievor's transfer" for which the minutes of settlement expressly provided and that the confidentiality provision only prohibited disclosure of the "terms of the settlement", not the fact of

one. The Union replies that it was not necessary for the Employer to disclose the reason for the transfer, and that the transfer was a term of the settlement.

7. I agree with the Union's position and find there was a breach of the confidentiality provision by the Employer in disclosing the transfer was part of a grievance settlement. Having said that, I would not grant any other remedy for the breach. The person to whom the disclosure was made, the incumbent, was already aware of the fact the transfer was being done as part of a "solution" to a harassment complaint which was at "arbitration". This is apparent from her email. If the incumbent understood "solution" meant "settlement", then the disclosure by the CEO that the transfer was part of a settlement told her nothing she did not already know. If, on the other hand, the incumbent did not understand that "solution" meant "settlement", she was nonetheless already aware of the context in which the settlement was reached: the solution of a harassment complaint at arbitration. In either event, the only person to whom the disclosure was made was the incumbent. In all of these circumstances, and given the breach was innocent, no other remedy is warranted.

Signed this 25th day of February, 2020.

"Ian Anderson"

Ian Anderson

Arbitrator