

In an arbitration hearing pursuant to the Labour Relations Act, 1995:

Between

Teamsters Local Union Local 847

(“the Union”)

and

Stericycle Inc.

(“the Company”)

Re: Grievance of Taylor DiMauro

AWARD

Appearances for the Union:

Lisa Triano, Counsel
Jeff Snow
Tom Fraser
Rick Smith
Chris Fullerton

Appearances for the Company:

Clifford J. Hart, Counsel
Nicolas Lapointe
William Legere
Usman Shaibu

Hearing held on January 27, 2020 in Toronto, Ontario.

1. I was appointed by the parties pursuant to the collective agreement to hear the grievance challenging the termination of Taylor DiMauro ("the grievor"). At the commencement of the hearing, the Company raised a preliminary objection to my jurisdiction to determine this matter. Following the submissions of counsel, I orally ruled in favour of the Company's motion and dismissed the grievance. The Company asked that I briefly set out my reasons, which I have done so in this award.
2. There is no dispute that the grievor was a probationary employee under the collective agreement at the time of his termination. According to the termination letter dated May 9, 2019 (issued on May 27, 2019), the grievor's "...probationary period has been deemed unsuccessful".
3. Article 12.01(a) of the collective agreement applies to the termination of probationary employees. The provision reads as follows:

12.02 (a) Each employee shall serve a probationary period equal to the first ninety (90) calendar days of employment and will have no seniority rights during that period. Upon completion of the probationary period, the employee shall attain regular employee status and his name shall be added to the seniority list. The termination of a probationary employee shall be at the sole discretion of the Company. (Emphasis added)

4. The Union relies on several provisions to argue that the Company must satisfy preconditions before it can terminate the employment of a probationary employee. First it points to Article 12.02(b) which provides some details about the probationary period. That provision reads as follows:

12.02(b) The probationary period is defined as the initial ninety (90) calendar day employment period of a new employee which provides for on-the-job training, adaptation and the performance of the responsibilities established within any job classification. It provides the employee with a practical work experience and exposure to the Company, its operations, and the job responsibilities to which the employee is assigned. It also provides the Company with sufficient time to determine the employee's overall suitability and compatibility to perform the work for which he was employed.
5. The Union argues that this provision places an obligation on the Company to provide the employee with on the job training and work experience. It argues that the Company failed to satisfy this provision.
6. The Union also relied on Article 6.08 which sets out procedural steps. That provision reads as follows:

6.08 If the Company suspends or discharges an employee, it shall notify both the employee concerned and the Steward, in writing, within two (2) working days, giving the reasons for such discharge or suspension.

7. While the Union acknowledged that a steward had been present at the termination meeting, it argued that the Company's reasons were insufficient to satisfy this provision.
8. Despite the arguments put forward by Union counsel, I am not persuaded that the Company violated the collective agreement provisions when it terminated the grievor's employment. Pursuant to Article 12.01(a), the Company was entitled to terminate the grievor's employment at "the sole discretion of the Company". There is no dispute that a union representative attended the termination meeting and that the Company provided a termination letter to the grievor at a time when the grievor was on probation.
9. Article 12.02(b) cannot be interpreted as a precondition to the termination of a probationary employee. It is, as argue by the Company, a definitional provision that explains the details of a probationary period.
10. Without deciding that Article 6.08 applies to the termination of a probationary employee – a point disputed by the Company – the Company's letter sets out the reason for the termination. Specifically, the grievor was unsuccessful in his probationary period. Thus, if Article 6.08 applies, it has been satisfied. Even it was not satisfied, it is not apparent that the consequence is to void the termination. These parties have negotiated procedural provisions around discipline and discharge that spell out the consequence if such provisions are breached by the Company. Article 6.11 is one such example.
11. There are no allegations that the grievor's human rights were violated. The termination letter makes clear that the grievor was unsuccessful during his probationary employee. The collective agreement does not impose the preconditions as the Union argued nor has the Company breached the collective agreement in the termination of this probationary employee.
12. For these reasons, the Company's preliminary motion is upheld. The grievance is dismissed.

Dated this 3rd day of February, 2020 in Toronto, Ontario.



Matthew R. Wilson