

IN THE MATTER OF AN ARBITRATION

BETWEEN:

LAURENTIAN UNIVERSITY

("the University")

AND:

LAURENTIAN UNIVERSITY FACULTY ASSOCIATION

("the Association")

IN THE MATTER OF:

PAYMENT TO DISTANCE EDUCATION SESSIONALS UNDER 2017 RETURN TO
WORK PROTOCOL

SOLE ARBITRATOR:

Kevin M. Burkett

APPEARING FOR THE UNIVERSITY:

Michael Kennedy - Counsel

APPEARING FOR THE ASSOCIATION:

David Wright - Counsel

AWARD

This grievance concerns the reduction in the per-student payment for "distance education," as provided mostly by sessionals, to take into account the period of the eight-day faculty strike that took place in October 2017.

It is the position of the Association that this category of instructor is not referred to in paragraph 7 of the Return-To-Work Protocol, which contains formulae for the reduction in pay for five classes of members, such that the University acted without its agreement in reducing the payment for these sessionals.

The evidence is that the Association advised the University's chief negotiator that the University had not included in paragraph 7 reference to those paid on a per-student basis and that the chief negotiator "shrugged" in response and did not amend the University's paragraph 7 proposal. The Association considers the absence of any reference to a reduction in the per-student rate, the reaction of the chief negotiator when told and the subsequent failure of the University to amend paragraph 7 as supportive of the finding that there was no intention to reduce the pay of these faculty members. This finding, it is argued, is consistent with the fact that there are no classes in these courses, such that no classes were cancelled as a result of the strike and, therefore, there was no reduction in work as a result of the strike.

The University disputes the contention that these sessionals were omitted from paragraph 7 of the Return-To-Work Protocol such that there was no agreement to reduce their pay. It is the position of the University that paragraphs 6 and 7 of the Return-To-Work Protocol clearly cover sessional members. The University points to the definition of a sessional member at paragraph 1.30.1(p) of the collective agreement as encompassing those sessionals who provide distance education and to article 4.56 that provides the rate of pay for sessionals who instruct through distance delivery modes. I am asked to find, therefore, that paragraph 7 of the Return-To-Work Protocol reduces the rates of pay for sessionals who provide distance education. It is the position of the University that given the clear meaning of the collective agreement the indifference of its chief negotiator to the concern of the Association that there was no explicit reference to the distance education sessionals in paragraph 7 of the Return-To-Work Protocol cannot be relied upon as a representation that they are not covered by paragraph 7 of the Return-To-Work Protocol.

DECISION

While it would have been better for the University's chief negotiator to have made a definitive response when queried by the Association about the absence of a specific reference to distance education sessionals in paragraph 7 of the Return-To-

Work Protocol, the University's interpretation of paragraph 7, when read in conjunction with the relevant provisions of the collective agreement, is correct. When read in light of these provisions of the collective agreement and in light of the fact that the Association queried the absence of a specific reference to distance education sessionals (because, presumably, it was unsure as to what this meant), I am not prepared to infer that the indifference of the University's chief negotiator nor the failure of the University to alter its proposal (which I have found encompassed distance education sessionals) constituted a representation that distance education sessionals were not covered by paragraph 7 of the Return-To-Work Protocol.

Having regard to all of the foregoing, this grievance is hereby dismissed.

Dated this 12th day of September 2019 in the City of Toronto.

Kevin Burkett

KEVIN BURKETT