

IN THE MATTER OF AN ARBITRATION

BETWEEN

SINAI HEALTH SYSTEM

(the "Hospital")

And

NATIONAL ORGANIZED WORKERS UNION

(the "Union")

GRIEVANCES OF THEODOROS KAZAS

1 day suspension, 5 day suspension and Termination

SOLE ARBITRATOR: John Stout

APPEARANCES:

For the Employer:

Sarah A. Eves, Hicks Morley LLP

For the Union:

David Cote- Cote Professional Corporation

HEARING HELD IN TORONTO, ONTARIO ON JULY 27, 2020

INTERIM PROCEDURAL AWARD

[1] This matter concerns three grievances filed by the Union on behalf of Theodoros Kazas (the "Grievor"). Two of the grievances allege that the Hospital violated the Collective Agreement by disciplining the Grievor without just cause. The third grievance alleges unjust termination.

[2] The Union requested pre-hearing production from the Hospital during a conference call on July 14, 2020. The Hospital consented to the production and delivered a Book of Documents to the Union prior to the first date of hearing. I was provided with an electronic copy as well.

[3] The hearing commenced on July 27, 2020; at which time the Union raised an issue with respect to incomplete production by the Hospital. The Hospital acknowledged that they had additional documents in their possession that they were prepared to produce, although they were concerned about the confidentiality of the documents. Those documents were produced at the hearing prior to opening statements. It was understood that the documents were only produced for the purposes of the hearing, they would only be copied for use at the hearing and the content would not be disclosed outside the hearing.

[4] A number of documents produced by the Hospital, including the documents produced at the hearing, relate to a Confidential Investigation Report involving allegations of inappropriate conduct made by two other employees against the Grievor.

[5] After the documents were disclosed, counsel made detailed opening statements. It was then agreed that an attempt would be made to resolve the grievances by mediation. Unfortunately, the parties were unable to resolve the grievances through mediation and it was agreed that additional dates would need to be scheduled for the hearing to continue.

[6] After mediation efforts failed, the Hospital's counsel asked for an order confirming that the documents they produced were to be kept confidential and no copies were to be made other than for the purposes of this hearing. Union counsel agreed that such an order would be appropriate in these circumstances.

[7] I agree with the parties' submissions that the documents include information that should not be disclosed to anyone and should only be used for the purposes of the hearing. The disclosure of the documents and the content found in those documents could cause embarrassment and/or harm to both the Grievor and those who raised the complaints. I note that it is not unusual to make orders protecting the confidentiality of certain documents in arbitration proceedings, see *Niagara College and OPSEU, Local 242*, 2019 CanLII 54739 (ON LA). In my view, and in order to avoid any confusion, a confidentiality order should cover all documents produced by the Hospital in these proceedings.

ORDER

[8] Therefore, after considering the parties' submissions, I order that the documents produced by the Hospital are to remain confidential and are subject to the following confidentiality conditions:

- a) All documents are to be kept confidential as among the parties;
- b) The documents produced to counsel may be shared with one advisor and the Grievor, subject to these persons undertaking to keeping the documents confidential;
- c) No copies shall be made of any document except for the purpose of the hearing of these grievances;
- d) No copies of the documents are to be circulated to anyone other than counsel;
- e) The documents are to be used only for the purposes of this hearing and for no other or improper purpose. Specifically, the documents are not to be used in any other proceeding and are not to be shown or provided to any other party or person outside this hearing;

f) Any copies of the documents are to be destroyed at the conclusion of this proceeding and any judicial review proceedings arising out of this matter, save for one copy to be retained by each counsel in her or his file; and

g) No information contained in any of the documents shall be disclosed to any person except for the purposes of this proceeding, or except as required by law.

[9] Either party may apply to me for further orders and directions with respect to the production of the documents, including seeking amendments to this order, if necessary, to ensure a fair hearing.

[10] My office shall schedule additional dates for this matter to continue.

Dated this 27th day of July 2019 in the City of Toronto, Ontario.

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke extending to the right.

John Stout, Arbitrator