

IN THE MATTER OF AN ARBITRATION
Pursuant to the *Labour Relations Act*, R.S. 1995

BETWEEN:

TRILLIUM HEALTH PARTNERS

("Employer")

- and -

ONTARIO NURSES' ASSOCIATION

("Union")

(Grievances of A. Douglas)

AWARD

SOLE ARBITRATOR:

Jasbir Parmar

On Behalf of the Employer:

Amanda Hunter

On Behalf of the Union:

Nadia Pronych

Heard via videoconference on August 11, 2020.

- [1] This matter involves a number of grievances alleging unjust discipline and termination. All of the Employer's actions being grieved involve issues around the Grievor's competence and performance of nursing duties. Prior to the termination, at the Employer's request and in the course of dealing with the issues around competency, the Grievor provided the Employer with a copy of her critical care certificate from Humber College. The Employer had some concerns about the veracity of the certificate and sought the Grievor's authorization to confirm this credential with Humber College. The Grievor declined to provide this authorization.
- [2] The Employer now seeks a pre-hearing order for production for confirmation of the Grievor's critical care certificate from Humber College. The Union objects. Given the short-time frame until the commencement of hearing, the parties agreed a decision with brief reasons would suffice.
- [3] The Grievor's nursing competency is clearly an issue in this matter. The Grievor's educational qualifications form a foundational part of her skill set and, as such, are arguably relevant to the underlying issues in dispute in this case. In reaching this conclusion, I am cognizant of the fact that the critical care certificate is not an express requirement of the position the Grievor held at the time of her termination. That fact goes to the weight, if any, to be given to this document in the event it is admitted as evidence. It does not, however, detract from the conclusion that all of the Grievor's nursing education and educational qualifications are arguably relevant to and may shed light upon her performance in the job. This is underscored by the fact that the Employer requested this document in the course of managing her performance issues prior to the termination.
- [4] Even if the documents at issue were not relevant to the issues in dispute in respect of the merits of the grievances, the Grievor's critical care certificate is arguably relevant to the issue of remedy. If the Employer is unsuccessful in establishing that termination is appropriate in this case, I will have to decide whether reinstatement, a remedy sought by the Grievor, is appropriate. In a termination case, merits and remedy involve separate issues and evidence which may not be admissible or relevant in respect of the first may well be admissible and relevant in respect of the latter. In the present case, it is clear that the Employer has some concerns about whether the Grievor accurately represented her educational qualifications at the time of hire. These

concerns relate to the issue of whether the trust relationship essential to the employment relationship remains. Again, while the weight, if any, to be given such evidence remains to be determined, the documents at issue are arguably relevant to the issue of the appropriate remedy.

- [5] For the reasons noted above, I order the Grievor to provide to the Employer the necessary authorization for the Employer to obtain verification of her critical care certificate from Humber College.

Dated this 12th day of August, 2020.

"Jasbir Parmar"

JASBIR PARMAR