

IN THE MATTER OF AN ARBITRATION

(Re: Policy grievance and a large number of individual grievances)

BETWEEN

KINGSTON HEALTH SCIENCES CENTRE (the Employer)

AND

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1974 (the Union)

BEFORE ARBITRATOR N. JESIN

For the Employer: Scott MacInnes - Labour and Employment Adjudication Lead

For the Union: Jessica Greenwood - Counsel

Sole Arbitrator: Norm Jesin

SUPPLEMENTARY PROCEDURAL AWARD:

On September, 23, 2020 I issued a decision in which I determined that the Employer implemented a schedule without making “every reasonable effort” to ensure that employees were given two consecutive days off. As a result I determined that the schedule was implemented in violation of Article G3 of the collective agreement. I remain seized in case the parties could not “agree on an appropriate outcome”.

The Employer seeks to implement a new schedule in response to the award which does indeed provide two consecutive days off. However, the Union asserts that the proposed schedule is arbitrary and is otherwise in violation of the collective agreement. The Union further requests that I exercise my remedial jurisdiction arising from my award to deal with its assertions regarding the proposed schedule. The Union has asked me by written request to schedule a hearing to consider its position and claim for further relief.

The Employer asserts that this request is beyond my jurisdiction. Although the matters raised by the Union’s request arguably fall within the four corners of the grievances (both policy and individual) before me, the Employer asserts that the Union initially took the position that it was restricting its claim to whether the Employer’s previous schedule was in violation of Article G3. Having obtained a ruling on that matter, the Employer asserts that any claim that the newly proposed schedule violates other provisions of the agreement, is new and should be the subject of new grievances. The Employer therefore submits that no further hearing should be scheduled on this matter.

Before determining whether a hearing should be scheduled, I am directing the following:

The Union is directed to file a full and complete submission on the following points:

1. Did the Union indicate at any time indicate that it was no longer pursuing any claim in the original grievances other than whether the Employer was in violation of Article G3.
2. Irrespective of the answer to question 1, how does the claim regarding the new proposed schedule fall within my jurisdiction. Is at a new matter or is it a remedial matter arising from my initial award. A full submission should be made on this point.
3. What is the new schedule being proposed and how is the new schedule inconsistent with the provisions of the collective agreement? What provisions of the agreement are being violated and on what basis?

Once the Union provides full submission on these matters, I will then determine whether the Employer should respond and to what extent. I will determine, when appropriate, whether a hearing is necessary to determine these matters or whether I may decide the matters raised based on the submissions provided.

Dated at Toronto, this 13th day of January, 2021.



Norm Jesin

