

IN THE MATTER OF AN ARBITRATION

BETWEEN:

UNITED FOOD AND COMMERCIAL WORKERS LOCAL 175 (the Union)

AND

NORTH PARK NURSING HOME (the Employer)

RE: GRIEVANCE OF KIMBERLEY MOREAU (the grievor)

APPEARING FOR THE UNION: Mary Hurley, Counsel

APPEARING FOR THE EMPLOYER: Robert Kelly

SOLE ARBITRATOR: Norm Jesin

HEARING DATE: November 24, 2020

AWARD

The grievance in this case alleges that the grievor was terminated from her employment with the Employer without just cause. At the hearing the parties, with the grievor's consent, reached agreement on this matter. That agreement is set out below:

LAST CHANCE AGREEMENT

The following agreement constitutes a Last Chance Agreement by and between North Park Nursing Home (the "Company"), the United Food and Commercial Workers Canada, Local 175 (the "Union"), and Kimberley Moreau (the "Grievor") regarding the Grievor's continued employment with the Company (together, the Company, the Union and the Grievor the "Parties").

WHEREAS the Grievor was terminated on or about September 13th, 2019 (the "Termination");

AND WHEREAS the Union and the Grievor grieved the termination under the Collective Bargaining Agreement (Grievance No. R2-19-0920) (the "Termination Grievance"), and the matter was set down for hearing in front of Arbitrator Jesin on November 24, 2020 (the "Hearing");

Now therefore, the Parties agree, without prejudice or precedent to any other matter, as Follows:

1. The Company agrees to reinstate the Grievor, effective the date of signing this Last Chance Agreement (the "Reinstatement Date") to her former position as Dietary Aide with no loss to her seniority and no loss to her service rights under the Collective Bargaining Agreement under the terms of this Last Chance Agreement. She will return to work no later than December 1, 2020.
2. Effective the Reinstatement Date, the Company agrees not to rely on any disciplinary sanctions in the Grievor's personnel file, for any purpose, which includes the events giving rise to the Termination.
3. Upon reinstatement under this Last Chance Agreement, no outstanding wages, accrued vacation, pension contributions or any other benefits or payments whatsoever are due or

owing to the Grievor for the period of between the Termination and the Reinstatement Date.

4. Upon the Reinstatement Date, the Grievor will be entitled to accrued and pro-rated sick and vacation time (calculated from the Reinstatement Date forward) in accordance with the Collective Bargaining Agreement.
5. As a condition of this Last Chance Agreement, the Grievor agrees to provide a written apology addressed to Laura Avila, to be delivered to the Employer through Union Counsel, no later than 5 working days from the Reinstatement Date.
6. As a further condition of this Last Chance Agreement, the Grievor agrees to attend an anger management course within 60 days of the Reinstatement Date. In the event the Grievor is unable to complete the anger management course due to the on-going pandemic, the Grievor undertakes to complete the course as soon as she is reasonably able to thereafter. The Grievor will provide proof of completion of the anger management course to the Employer.
7. For a twelve (12) month period following the Reinstatement Date (the "Last Chance Term"), any action or inaction by the Grievor that would ordinarily be subject to a one-day suspension or more severe form of disciplinary sanction, shall constitute just cause for her immediate discharge from employment with the Company. Any grievance and arbitration relating to such discharge from employment shall be limited to the sole factual determination as to whether the Grievor committed the alleged infraction, and if established factually, whether such misconduct would ordinarily attract a one-day suspension or more severe disciplinary penalty. No arbitrator or board of arbitration shall have the authority to vary or reduce the penalty of discharge if: 1) the alleged misconduct is factually established; and 2) It is established that the misconduct is ordinarily subject to a one-day suspension or more severe disciplinary sanction.
8. The Termination Grievance is resolved in consideration of the Grievor's reinstatement pursuant to the terms of this Last Chance Agreement.
9. The terms and conditions of this Last Chance Agreement shall expire, and be of no force or effect, following expiry of the Term.
10. The Grievor agrees that she has been fully and fairly represented by the Union in respect of the termination grievance and its resolution, and that she is voluntarily entering into the terms of this Last Chance Agreement.

11. Arbitrator Jesin shall issue this agreement as his own Order and shall remain seized with respect to the implementation, interpretation and application of this Last Chance Agreement and his Order.

Having regard to the Agreement of the parties I hereby direct and order the parties to implement the agreement as set out above. In accordance with the agreement I remain seized with respect to any issue arising regarding the implementation, interpretation or application of this Order.

Dated at Toronto, this 24th day of November, 2020.

A handwritten signature in black ink, appearing to be 'NJ', is written over a horizontal line.

Norm Jesin