

**IN THE MATTER OF AN ARBITRATION
PURSUANT TO A COLLECTIVE AGREEMENT**

BETWEEN:

HUMBER RIVER HOSPITAL

(“the Employer”)

-and-

**ONTARIO PUBLIC SERVICE
EMPLOYEES UNION, LOCAL 577**

(“the Union”)

INTERIM AWARD

Sole Arbitrator

Christopher White

For the Employer:

Shane Todd

Fasken Martineau DuMoulin LLP

Maria-Cristina Cavicchia

**Corporate Director, Employee
and Labour Relations**

Brenda McGuirk

**McGuirk and McGuirk Trusted
Partnership**

For the Union:

James Craig

Morrison Watts Hurtado

Cori Stadler

OPSEU Local 577 President

Amanda Irmya

Grievor

Date of Hearing:

February 25, 2025

1. I have been appointed as sole arbitrator of a grievance filed by the Union on behalf of its member, Amanda Irmya (“the Grievor”) in connection with her termination of

employment by the Employer for being unvaccinated in contravention of its policy introduced in response to the COVID-19 pandemic. The Union stated that the Grievor had made a request for a religious exemption to the Employer that was not granted.

2. The hearing was scheduled to commence on February 25, 2025 with two continuation dates scheduled in August 2025. I was advised by the parties that prior to the hearing date there had been a settlement proposal made by the Union that remained outstanding.

3. At the outset of the hearing date, the Employer advised that it would be seeking an adjournment and it was my understanding that this request had been made to the Union which responded that it was not prepared to consent.

4. The Employer stated that it has been involved in two prior arbitration cases involving its COVID-19 policy that have resulted in awards. The first of these was the decision in *Humber River Hospital v Teamsters Local Union No. 419*, 2024 CanLII 19827 (ON LA) (Parmar) in which the arbitrator allowed the grievances of two employees who had been terminated under the policy concluding that "...the Hospital did not have cause to terminate the grievors' employment, either on a disciplinary basis or on non-culpable grounds". The second was the decision in *National Organized Workers Union (NOWU) v Humber River Hospital*, 2024 CanLII 52386 (ON LA) (Tremayne) in which two policy grievances challenging the policy (including its termination language) were dismissed on the basis that "... the Hospital's mandatory vaccination policy served a valid safety purpose and that, in this regard, it was reasonable". I was advised that applications for judicial review have been commenced in respect of both these awards by the unsuccessful parties in each case. There have been no court dates set in either case.

5. It was submitted by the Employer that these facts support the granting of an adjournment. Allowing for resolution of the competing arbitration awards is in the interests of the parties and the public as it may provide guidance in this case and avoid the harm caused by a decision that might be inconsistent with a subsequent determination by the courts. Economy, certainty and fairness all militate in favour of the motion to adjourn.

6. In support of its position that the motion to adjourn should be dismissed, the Union commenced by reminding me that this was a termination grievance and that it had taken over three (3) years to come before an arbitrator. The Union cited the well-known maxim that justice delayed is justice denied. Further, the Grievor has more than eight (8) years of seniority and I was advised that the termination has had serious and deleterious consequences for her both financially and emotionally. The Grievor did not find alternate work in her field as a laboratory technician and is now pursuing credentials for a new career in an unrelated field. The Grievor spoke personally about the tremendous upset the

termination has created for her career and her personal life and I have no doubt about the genuineness of her words.

7. With respect to the Employer's argument that the judicial review of two prior awards supported the granting of the adjournment, the Union submitted that everything about those proceedings, including their outcomes, is entirely speculative and may not provide any resolution or guidance to the parties in this case. Finally, it was the Union's position that there was no prejudice to the Employer if the case were to proceed on the first scheduled date while any further delay could only be prejudicial to the Grievor. For all these reasons, the Union asked that the Employer's motion be dismissed.

8. In allowing the Employer's motion to adjourn, I have had regard to the submissions respecting the awards that are the subject of judicial review as well as the specific facts of this particular case. With respect to the judicial reviews, I note that the two decisions on their face appear to come to opposite conclusions about questions that are relevant in this proceeding. At this time no proceedings before the court(s) are scheduled and it may well be that if that situation continues for the foreseeable future, it will not support a conclusion that this matter should be further adjourned.

9. With respect to the practicalities impacting the process in this case, I note the following:

- It was my understanding that there may well be incomplete pre-hearing procedures respecting the exchange of particulars and production that may ultimately lead to a more expeditious and efficient hearing and the parties would require time to deal with those.
- This hearing, without further case management, was not going to be completed in one (1) day in any event and the parties have two (2) further dates scheduled in August of this year. Having heard the parties' positions respecting the issues in dispute, I consider that the case may be completed in those two dates which removes any prejudice that might otherwise have been created by an adjournment.

10. I have advised counsel for the parties that in the event that this matter is not otherwise resolved prior to the next scheduled hearing date, I expect them to enter discussions respecting pre-hearing matters and agreements respecting procedure that may facilitate an expeditious and efficient hearing that can be completed in the two (2) remaining hearing dates. This may include agreed statements of fact, joint document books, will-say statements etc. As well, the parties may wish to discuss alternate hearing procedures such as mediation-arbitration. In any event, if counsel cannot reach agreement about such matters, I should be contacted and a case management conference call will be scheduled prior to June 30, 2025.

11. For the foregoing reasons, the motion to adjourn is granted.

DATED this 25th day of February, 2025.

A handwritten signature in black ink, appearing to read "C White", with a stylized flourish extending from the end of the word "White".

Christopher White