

In the Matter of an Arbitration

Between:

Centre for Addiction and Mental Health (CAMH)

(The "Employer")

-and-

Ontario Public Service Employees Union, Local 500

(The "Union")

Re: Grievance of Sheeba Mathew (The "Grievor")
#2023-0500-0017

Arbitrator: Brian Sheehan

Appearances:

For the Employer: Daina Search - Counsel

For the Union: Rebecca Jones - Counsel

Hearings conducted on August 16, 2024, and May 23, 2025
Written Submissions Exchange Concluded on June 22, 2026

This Award addresses a preliminary motion advanced by the Employer that the grievance ought to be dismissed on account of mootness, and that there is no labour relations purpose in continuing to hear the grievance.

The first hearing date was August 16, 2024. On that day, an attempt to reach a mediated resolution was unsuccessful. Additionally, a schedule was set for the Union to provide the Employer with its particulars associated with the grievance, and for the Employer to respond to those particulars prior to the next day of hearing, which was scheduled for May 23, 2025.

On February 5, 2025, Ms. Jones, on behalf of the Union, forwarded the Union's particulars to Ms. Search.

A second hearing was held on May 23, 2025. After another unsuccessful mediation, Ms. Search advised that the Employer intended to bring a preliminary motion to dismiss the grievance on the ground of mootness.

After the June 13, 2025, hearing was adjourned due to the Grievor's illness, the matter was rescheduled for March 26, 2026. On March 25, 2026, the parties advised that the following day's hearing could be adjourned, as they had agreed to address the Employer's preliminary motion by way of written submissions.

Background Facts

The Grievor commenced employment with the Employer on November 22, 2021, as a Social Worker 2 in the Psychosis Coordinated Care Service (PCCS) Psychosis &

Recovery Treatment Program. Her manager was Maria Reyes, Clinical Manager, Partial Hospitalization Program, Complex Mental Health, PCCS, Psychosis & Recovery Treatment Program.

The Grievor's workday ran from 8:30 a.m. to 4:30 p.m., with Team rounds starting at 9 a.m. and client appointments at 9:30 or 10 a.m.

In early 2022, Ms. Reyes raised with the Grievor the issue of her arriving at work late. The Grievor claims that she explained that her late arrivals were due to arrangements she had in place to ensure her son arrived at his high school on time. The Grievor claims that, given the nature of those arrangements, she asked Ms. Reyes whether she would be allowed to arrive at work by 8:40 a.m. and offered to have a shorter lunch or stay late to cover any lost work time. The Grievor claims that Ms. Reyes agreed to that arrangement at that time, provided that the Grievor arrived at work no later than 8:45 a.m.

The Grievor's family had originally lived in Mississauga and later moved to Milton. After the move, the Grievor's son and daughter continued to attend elementary school in Mississauga. When transitioning to high school, school authorities agreed that it would be best for the Grievor's son to attend high school in Mississauga. One reason for the decision was the Grievor's husband's sudden death in 2018.

If relying solely on public transit, arriving at his high school for the start of classes at 8:30 a.m. would require the Grievor's son to leave home at 6:45 a.m. in the dark for much of the school year, walk 20 minutes to catch the first bus, and then take two

additional buses. The Grievor viewed this arrangement as risky and unsafe for a 14-year-old.

Seeking alternative arrangements, the Grievor found a community centre located 14 kilometres from her home that opened at 7:00 a.m. three days per week. On the remaining two days, it opened at 8:00 a.m.

On days when the community centre opened at 7:00 a.m., the Grievor drove her son to the community centre and dropped him off at the time of opening, where he would wait 45 minutes until he caught a bus to his school, which opened at 8:00 a.m. He would then wait at school until classes started at 8:25 a.m.

After dropping her son off at the community centre at 7:00 a.m., the Grievor drove to the Oakville GO station and caught the 7:50 a.m. train to work. Because the community centre did not open until 7:00 a.m., she was unable to reach the GO station in time for the 7:15 a.m. train. By taking the next train at 7:50 a.m., the Grievor arrived at work at 8:40 a.m.

On the two days per week when the community centre opened at 8:00 a.m., the Grievor dropped her son off at a friend's house, and the friend agreed to drive him the rest of the way to his school. This friend was a nurse who worked in downtown Toronto. Given this friend's nursing schedule, she was not available to drive the Grievor's son every day.

On the days she dropped her son off at the community centre at 7:00 a.m., the Grievor claimed she was uncomfortable driving directly to CAMH and preferred to rely on GO Transit.

The Grievor claimed that as of the beginning of 2023, Ms. Reyes began reneging on the assurance she had previously given the Grievor that she would not have to arrive at work until 8:45 a.m.

On April 28, 2023, the Grievor received a Letter of Expectation from Ms. Reyes with respect to arriving at work late and a failure to notify Ms. Reyes if she was going to arrive late or leave work early. Concerns about the Grievor's "documentation practices" were also referenced in that letter.

On June 8, 2023, representatives of the Employer met with the Grievor and Union representatives to discuss the Grievor arriving late for work and leaving work early. In that meeting, the Grievor reiterated that her lateness was related to arrangements for her son to arrive at school on time.

The parties met again on June 20, 2023, to discuss the situation. At that meeting, the Grievor formally requested a family status accommodation to provide flexibility to start and end her shift approximately fifteen (15) minutes past the scheduled 8:30 and 4:30 times. She also requested that if this was not feasible, she be allowed to take fifteen minutes off her lunch break to account for any lost time from arriving after 8:30 a.m.

In a letter dated June 26, 2023, the Employer advised the Grievor that her requested family status accommodation was not granted because it did not meet the threshold for such an accommodation. The Employer advised, however, that the Grievor could continue to arrive a few minutes late for the rest of her son's school year.

On July 6, 2023, the grievance was filed. The wording of the grievance is as follows:

I grieve the employer has breached and violated my rights, specifically but not limited to Article 3, 5, 18, 27 of the Collective Agreement by discriminating against me due to my family status in violation of The Ontario Human Rights Code. Management was initially willing to accommodate but reversed their position without explanation. Management has since not provided any understanding, assistance, advice or support. Management argues that my claim does not meet the threshold for requiring a family status accommodation but has not provided a rationale for this argument or suggested reasonable alternatives to accommodation. Management is presenting an overly narrow definition of the duty to accommodate, in contravention to the text and purpose of the Ontario Human Rights Code. This approach creates a disrespectful and noninclusive workplace, inconsiderate of my family status and customs, thereby abusing management rights, and violating any other applicable article, policy, and/or Legislation.

The remedy requested is as follows:

1. Management to acknowledge my family status needs are genuine and worthy of respect, consideration and accommodation and subsequent creation and implementation of a workplace accommodation plan.
2. To be made whole (including any damages/loss)
3. Any other redress to the satisfaction of the Grievor or that an arbitrator deems fit to award.

On July 18, 2023, the Employer advised the Grievor that she would be permitted to arrive and start work at 8:45 am daily and to make up the 15-minute period during her lunch break until August 4, while her son was attending summer school.

From September 2023 to February 2024, a neighbour drove the Grievor's son to school. The Union claims that after the neighbour could no longer drive the Grievor's son to school, the Grievor discussed with Ms. Reyes the need to again arrive late for work. It is claimed that Ms. Reyes stated that considering the outstanding grievance, the Grievor would not be allowed to arrive late for work.

As of May 2024, the Grievor's son was taken to school by a combination of his sister, who had returned home from graduate school, and the parents of some of his classmates.

As of June 2024, the Grievor's son graduated from high school, so the Grievor no longer required a family status accommodation.

On July 4, 2024, the Grievor received a 1-day suspension for clinical practice issues. On August 9, the Grievor gave the Employer notice of her resignation, effective August 16, 2024.

As previously outlined, the first hearing date in this matter was August 16, 2024. On that same day, a grievance was filed regarding the 1-day suspension. The wording of the grievance is as follows:

I grieve the employer who has breached and violated my rights, specifically but not limited to Article 3, 5, 9, 11.01, 29.08 of the Collective Agreement, abusing management rights by imposing a discipline of 1 day suspension; placing a discipline letter on file for 18 months and failure to ensure a safe and well workplace. This has caused harm to my psychological welfare and is injurious to my dignity, feelings and self respect; and any other applicable Articles, policies and Legislation.

Among the remedies sought was that the Employer “ensure a safe and well workplace environment free of intimidation and harassment.”

On February 5, 2025, Ms Jones forwarded the Union’s particulars with respect to these matters to Ms. Search. The Union indicated it sought to combine the family accommodation grievance with the 1-day suspension grievance. In an overview of the provided particulars, the Union set out the following assertions:

These grievances concern a failure to accommodate on the basis of family status and retaliation against the Grievor for her asserting her need for accommodation in the workplace. This retaliation took the form of harassing, bullying and discriminatory behaviour by Ms. Maria Reyes, the Grievor’s manager, and Ms. Carolynne Cooper, the Clinical Practice Lead. The Employer’s failure to accommodate, and Ms. Reyes and Ms. Cooper’s conduct, led to a toxic work environment for the Grievor.

Ms. Reyes initially agreed to informally accommodate the Grievor but then reneged on this agreement and proceeded to target and berate the Grievor in front of her colleagues for following the agreement.

After the Grievor requested an accommodation, Ms. Reyes and Ms. Cooper targeted, harassed, bullied and micro-managed the Grievor for months for alleged attendance and clinical practice issues, eventually resulting in the Employer disciplining the Grievor.

The parties settled the 1-day suspension grievance on January 15, 2026. A term of that settlement is as follows:

The Suspension Grievance is hereby withdrawn as settled. The parties acknowledge and agree that the Suspension Grievance is withdrawn without prejudice to either party’s ability to adduce evidence before Arbitrator Sheehan in respect of the Family Status Grievance about the fact of the aforementioned one-day disciplinary suspension, the Suspension Grievance, and/or the circumstances surrounding the one-day disciplinary suspension.

The Scope of the Grievance Issue

The Employer asserted in its particulars and submissions regarding the preliminary objection, that the Union has improperly sought to expand the scope of the grievance to include allegations of retaliation, reprisal, harassment, and bullying, and that such allegations fall outside the scope of the grievance over which I have jurisdiction.

Arbitral jurisprudence regarding the scope of the grievance is fairly well settled. The arbitrator's task is to balance the accepted principle that a grievance should be given a liberal reading with the principle that an arbitrator should not assume jurisdiction over a new or different matter that arises inherently from the grievance. In Greater Sudbury Hydro Plus Inc. and Canadian Union of Public Employees, Local 4075, 121 L.A.C. (4th) 193 (Dissanayake), the wording of the grievance referred to an employee being denied bumping rights in the context of his position being contracted out. At arbitration, the union sought to argue that the contracting out itself was unlawful because it resulted in an employee being laid off. In holding that the union was advancing an argument outside the scope of the grievance, Arbitrator Dissanayake noted:

I find two countervailing principles in the foregoing statement by the Court of Appeal. The first is that, where on a liberal reading of the grievance an issue, although not articulated well, is inherent within it, an arbitrator ought to take jurisdiction over that issue, despite any flaws in form or articulation. However, there is also a countervailing principle to the effect that an arbitrator ought not, in the guise of "liberal reading", permit a party to raise at arbitration an issue which was not in any manner, even inherently, joined in the grievance filed. To do that would be to defeat the very purpose of the grievance and

arbitration procedure. In *Liquid Carbonic Inc. v. U.S.W.A.* (1992), 25 L.A.C. (4th) 144 (Ont. Arb.) (Stanley), the arbitrator wrote at p. 147:

The whole process of grievance arbitration, and grievance procedure, is designed to permit the parties at the earlier stages to resolve the dispute between themselves. Hence, collective agreements invariably contain grievance procedure provisions so that grievances are funneled to an arbitration board only after the parties have had a chance to resolve the matter. It is our view that the comments of Professor Laskin and the decision in the *Re Blouin Drywall* case attempt to accommodate both values. If the issue raised at the arbitration hearing is in fact part of the original grievance, a board of arbitration should not deny itself jurisdiction based on a technical objection as to the scope of the original grievance. To do so would deny the value of flexibility and would be to compel the parties to draft their grievances with a nicety of pleadings. On the other hand, if the issue raised by one of the parties is not inherent in the original grievance, for the board to permit the party to raise that issue as part of the original grievance would be to deny the parties the benefit of the grievance procedure in an attempt to resolve the issue between themselves. In fact, it would be to permit one party to substitute a new grievance for the original grievance.

The issue in this case then becomes, was the allegation that the grievor was demoted in contravention of article 3.06 inherent even on a liberal reading of the grievance, or is it a new issue not inherent in the grievance filed.

(Emphasis added)

In the case at hand, it is difficult to reach any conclusion other than the allegations of reprisal, bullying, and harassment that the Union seeks to rely upon at arbitration raise new issues that were neither part of, nor inherent in, the grievance itself.

Further to that point, in Fanshawe College and Ontario Public Service Employees' Union 113 L.A.C. (4th) 328 (Burkett), the grievance filed specifically referenced the improper reclassification of certain work and the requested remedy

was that a position be posted for a full-time Professor position. At arbitration, the Union asserted that the work in dispute was bargaining unit work that should be properly classified as either a Professor or an Instructor position. Arbitrator Burkett, in finding that the Union at arbitration was improperly seeking to expand the nature of the grievance, suggested that with respect to the expansion of the grievance issue, the wording of the grievance and the remedy sought should be the focus in assessing the true essence of the grievance:

The Chair of this Board, sitting as a sole arbitrator in *Ontario Hydro v. Power Workers' Union - C.U.P.E., Local 1000 (supra)* and relying on the judgement of the Court of Appeal in *Blouin Drywall Contractors Ltd. (supra)*, articulated the well accepted principle that "grievances are not to be defeated by mere defects in form or by technical irregularities." In other words, arbitrators are to deal with the issue raised on a broad reading of the grievance. However, as was cautioned in *Ontario Hydro v. Power Workers' Union - C.U.P.E., Local 1000 (supra)*, "... it is not open to a party to unilaterally expand a grievance to encompass a matter not grieved." Fairness, as well as the efficient administration of the grievance and arbitration process dictates that this be so. The aggrieved party is entitled to rely on the grievance as filed, albeit read in its broadest terms, and to govern itself accordingly with respect to settlement discussion, referral to arbitration and preparation for arbitration. The cases referred to in *Toronto (City) v. C.U.P.E., Local 43*, as relied upon by the Union, support this statement of general principle.

In deciding whether the issue that is framed at arbitration is the same issue raised in the grievance as filed, an arbitrator must compare the grievance as written, including the remedy sought, to the issue as raised at arbitration, including the remedy sought. To the extent that *Mississauga Hydro-Electric Commission (supra)* and *Toronto (City) v. C.U.P.E., Local 43 (supra)*, as relied upon by the Union, can be read as distinguishing between the grievance filed and the remedy sought, this is an artificial distinction that, if relied upon, undermines the inquiry into whether the issue raised at arbitration is the issue raised in the grievance. Indeed, this is why the filing of a grievance at step 1 under this collective agreement must set forth "the nature of the grievance, the surrounding circumstances and the remedy sought." The acid test is whether an issue not encompassed within the

grievance that requires the calling of evidence and the making of legal submissions has been raised. Without restricting the authority of an arbitrator to fashion an appropriate remedy at the conclusion of a case, which may or may not differ from the remedy sought, it is the statement of grievance read in conjunction with the remedy sought that defines the essential nature of the grievance and the issues that have been raised by the grievance, thereby allowing an arbitrator to decide if a grievance has been improperly expanded.

(Emphasis added)

A review of the wording of the grievance, including the remedy being sought, reveals that the claims of retaliation, harassment, and bullying that the Union seeks to advance at arbitration were not raised whatsoever in the context of the grievance at that time. The Union's particulars do not suggest that the claims of retaliation, harassment, and bullying were raised during the grievance procedure discussions. The subject matter in dispute is therefore restricted to the appropriateness of the Employer's decision to deny the grievor the requested family status accommodation. Accordingly, to allow the Union to put forward such claims would undeniably constitute an expansion of the grievance.

It is further noted that by filing particulars, a party cannot seek to expand the scope or change the nature of the grievance. The purpose of particulars is to give the other party an understanding of the facts or arguments that the party will seek to advance at arbitration. The provision of such particulars does not necessarily render them relevant to the issues in dispute, and, as such, particulars in themselves cannot clothe a grievance with claims that are not in keeping with how the grievance was framed at the time of its filing or through the grievance discussions between the parties.

Reference is also made to the grievance filed by the Union regarding the 1-day suspension the Grievor received on August 16, 2024. In stark contrast to the family status accommodation grievance, the Union expressly referenced a claim that the Employer's failure to ensure a safe and well workplace caused harm to the Grievor's dignity, feelings and self respect. The remedies sought included that the Employer "ensure a safe and well workplace environment free of intimidation and harassment." The absence of such similar language in the family status accommodation grievance is telling, in my view, with respect to the narrow focus of that particular grievance.

In conclusion on this point, the Union's claims of retaliation, harassment, and bullying constitute an improper expansion of the grievance being arbitrated.

The Mootness Issue.

The essential legal rationale and principles underlying the doctrine of mootness were set out by the Supreme Court of Canada in Borowski v. Canada (Attorney General), 1 S.C.R. 342, [1989], wherein Justice Sopinka, speaking for the Court, noted:

The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly, if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general

policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice. The relevant factors relating to the exercise of the court's discretion are discussed hereinafter.

The approach in recent cases involves a two-step analysis. First, it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. The cases do not always make it clear whether the term "moot" applies to cases that do not present a concrete controversy or whether the term applies only to such of those cases as the court declines to hear. In the interest of clarity, I consider that a case is moot if it fails to meet the "live controversy" test. A court may nonetheless elect to address a moot issue if the circumstances warrant.

Applying the Borowski two-step analysis to the case at hand, the events that unfolded after the grievance was filed have, for all intents and purposes, resulted in there being no remaining "live controversy" between the parties. The conclusion that the dispute has become academic in nature is largely driven by the fact that the Grievor ceased being an employee of the Employer over two years ago. Additionally, with respect to the Employer's denial of her request for family status accommodation, the events suggest that the denial had little or no adverse impact on the Grievor. For the remainder of the 2022/2023 school year, the Employer, notwithstanding the formal denial of the Grievor's request, allowed her to arrive late for work. That accommodation continued to apply during the period when the Grievor's son attended summer school in 2023. With respect to the 2023/2024 school year, from September until at least the end of February, no accommodation was needed, as a neighbour drove the Grievor's son to school. From May until the end of the school year, the Grievor's son was able to get to school through his sister, who returned home from graduate school, and some parents of classmates. Accordingly, the only period where the denial of the accommodation

becomes potentially relevant is March and April 2024. The Union's particulars do claim that the Grievor, at some point in March or April, got a negative response from Ms. Reyes when she requested that the previous accommodation of her being able to arrive at work as of 8:40 a.m. be reinstated. It is noteworthy, however, that the particulars do not claim that she was disciplined or reproached in any fashion if she did in fact arrive late during the period in question or that she had to incur any additional costs associated with not being accommodated.

As to the second step of the Borowski analysis, it has been determined that it is not appropriate to exercise my discretion to allow the matter to proceed. It would not serve any labour relations purpose to have these parties incur the significant time and cost of litigation; when, at best, even if the Union's particulars were fully accepted, a finding that the employer acted in a discriminatory manner would be remote at best, and the course of events as they unfolded does not suggest that the Grievor was in fact harmed or adversely impacted in any tangible manner.

The Union's position that given the nature of the ongoing relationship between an employer and a union, an arbitrator should adopt a cautious approach to dismissing a grievance on the ground of mootness, even if the individual circumstances underlying a grievance have become academic, is accepted. In this regard, no issue is generally taken with the following reasoning of Arbitrator Slotnick in York University and Canadian Union of Public Employees, Local 3903 (2010) 199 L.A.C. (4th) 233 (Slotnick):

After reviewing all these decisions — some of which seem virtually impossible to reconcile with others — I have reached several conclusions that have guided my decision on this case. First, the arbitration awards

that pre-date the *Borowski* decision are not of much assistance. *Borowski* clarified the law and its "live controversy" test is the one that must be used. Second, it is apparent from the cases that arbitrators have exercised a very cautious approach in exercising their discretion to decline proceeding with a hearing, at least partly in recognition of the ongoing nature of the collective bargaining relationship. Events and situations that on the surface may seem to be confined to their own particular facts can and often do have wider implications for parties in a continuing relationship than they would in a typical case before the courts. Third, it is clear from most of the cases that where the substance of the dispute has been dealt with but there is still an issue as to the proper remedy, arbitrators will be very reluctant to declare the matter moot. Otherwise, an employer could block a union from requesting potentially warranted remedies simply because circumstances had changed, whether by action of the employer or otherwise. Fourth, despite the cautious approach, there are situations where arbitrators have called a halt to hearings even where the matter has not been settled but where the facts have changed and the grievance is moot. However, these are sometimes disputes with difficult and emotionally charged fact situations that had changed before the hearing and where the hearing itself would cause more harm than any potential benefit that could be derived (for example, the *St. Joseph's* case, cited above).

I agree that it is best for arbitrators to exercise caution in deciding not to proceed with a hearing where the factual situation has changed and a grievance may be moot. It is also worth remembering *Borowski's* two-step analysis, giving discretion to proceed even if the concrete dispute has disappeared. Generally in labour relations, in my view, it must be left to the parties themselves to determine when there is a dispute. Aside from circumstances where the grievance has, in fact, been settled, one party cannot simply declare that a dispute is over, nor should the arbitrator decline to hear the case where there are still potential remedies that have not been granted, or where there may be differing interpretations of the collective agreement that have wider application than to the individual grievor's situation. In many cases, a change in circumstances may cause the union to withdraw the grievance, but the decision to proceed is generally a decision for the union, not the arbitrator.

The facts in the York University, *supra*, case are far removed from those in the case at hand. The dispute in that case concerned the grievor not being awarded a course directorship for a particular course. The employer argued that the grievance was moot because in the relevant academic year, the grievor had picked up the maximum

number of courses that an instructor could be awarded for the academic year (the cap), so she therefore suffered no loss. Arbitrator Slotnick found that a live controversy remained between the parties because of the union's reliance on a particular collective agreement provision suggesting that a remedy was mandatory regardless of whether the employee would exceed the cap. There was thus a dispute in that case where, if the union was successful, there would be a clear remedial benefit to the grievor. Additionally, Arbitrator Slotnick was of the view that a determination on the interpretation argument being advanced by the union may assist in providing guidance to the parties in the future.

This case does not involve any issue of collective agreement interpretation for which an arbitral decision on the language in dispute may provide guidance to the parties with respect to their future dealings. Moreover, I do not accept the Union's assertion that the matter should proceed because a decision on this matter may be of assistance to the parties with respect to requests for accommodation based on family status that may arise in the future. It is speculative whether a similar family status accommodation issue would arise in the future. More importantly, family status accommodation cases are generally very fact-specific, often involving the exploration of alternative options to address the claimed need for the accommodation that may or should have been considered by the person seeking the accommodation.

Further to the above, reference is made to the decision in City of Sault Ste Marie and Canadian Union of Public Employees, Local 67 (2017) 278 L.A.C. (4th) 443 (Stout). The facts of that case involved an employee who received a 10-day suspension while

she was absent from work. At the time of the hearing, the employee had not returned to work, so she had not served the 10-day suspension. The employer indicated that it was rescinding the suspension and therefore asserted that the proceeding had become moot. In accepting the employer's argument, Arbitrator Stout accepted the reasoning of Arbitrator Slotnick in York University, *supra*, that an arbitrator should be cautious in declaring a grievance moot; however, he decided that there would be no labour relations purpose in proceeding with the hearing. Specifically, the following reasoning is applicable to the case at hand:

I agree with Arbitrator Slotnick that caution must be exercised when deciding not to proceed with a hearing where the factual situation has changed. At the same time, the doctrine of mootness ought to be applied in a labour relations context. In this regard, the parties to a collective agreement should not be put in the position of being required to have an individual grievance heard when there would be no labour relations purpose to proceed.

In my view, there is no longer a live issue or dispute between the parties. The discipline imposed on the Grievor that gave rise to the grievance has been withdrawn and she has suffered no loss. The City can no longer impose any discipline for the events that gave rise to the 10 day suspension. The individual remedy requested in the grievance has been effectively granted. The grievance does not raise any issues of wider application between the parties. In my opinion, a hearing would simply cause more harm than good.

There is also no reason to exercise my discretion to hear the grievance. The grievance does not raise any policy issue or concern between the parties to the collective agreement. Discipline cases are, by their very nature, very fact specific and a decision on the merits would serve no useful purpose to the parties with respect to any other matters that may arise in the future.

Finally, in my view, the parties should not be put to the needless expense of preparing and having an individual grievance heard when the individual has suffered no loss and her employment record has not been blemished. Grievance arbitration was designed to provide the parties to a collective agreement with an expedited and relatively inexpensive method of

resolving their differences. It would be unreasonable to proceed with a matter when the underlying basis for the dispute is an individual matter, which has effectively disappeared.

(Emphasis added)

Reference is also placed on the decision in City of Toronto and Canadian Union of Public Employees, Local 79, 2019 CarswellOnt 8164 (Parmar). That case involved the Union asserting that the grievor had been improperly placed at the first threshold of the employer's attendance management program. However, the level of the grievor's absenteeism subsequent to the grievance being filed would have resulted in him passing the first threshold even if the employer had previously erred in deeming that he had passed the threshold. After citing the two-step analysis set out by the Supreme Court in Borowski, *supra*, Arbitrator Parmar opined:

I turn to applying the first step of the analysis to the present case. The issue raised by the grievance is whether the City should have considered the absences at issue to be excluded on the basis they were due to "special circumstances".

The events that followed the filing of the grievance constitute a classic example of how a dispute can be rendered academic. It does not matter anymore how the City characterized those particular absences. The Grievor suffered no negative consequences. He suffered no economic loss, having received sick pay for the absences at issue. His employment record remains unblemished, as being placed at the Informal Stage in the Program does not form part of an employee's personnel file, and placement in the Program is not a disciplinary action. His most recent status in the Program, as of January 2019, is exactly what it would be even if the City had not engaged in the March 2017 action that is being challenged in this grievance.

Of the remedies specified in the grievance, the only one outstanding is a declaration that the City violated the collective agreement. Generally, a declaration would not be considered as something that has, as the Supreme Court indicated was necessary, a "practical effect on [parties'] rights".

Finally, on this point, reference is made to the decision in Hamilton Health Sciences and Ontario Public Service Employees Union, Local 273, 2023 CarswellOnt 19111 (Wright). That case involved an employee's request for a particular week as vacation. The grievance asserted that the employer had not followed the correct procedure under the collective agreement regarding the priority given to full-week vacation requests over single-day vacation requests in the vacation scheduling process for approving employees' vacation requests. At arbitration, the employer conceded that there had been a breach of the collective agreement and indicated that it allowed the grievance. The grievor did not, in fact, work the week he had requested as vacation due to illness; accordingly, the employer argued that the grievance should be dismissed as moot. In accepting the employer's argument, Arbitrator Wright determined that there was no live interpretative issue to be decided, or an outstanding remedial matter; the matter was therefore moot, and it was not appropriate to exercise his discretion to allow the grievance to proceed. Specifically, he observed:

....Moreover, as it transpired, the Grievor was off sick the week of December 19, 2022. I agree with the Hospital, had the week been awarded as vacation, he would not have been able to utilize it because of his illness. Simply put, the Grievor suffered no loss because of the breach of the collective agreement in this case. There is nothing for which he is owed compensation. It is well-established that arbitrators fashion remedies for a breach of a collective agreement to make a grievor whole — to put them in the position they would have been in had the breach not occurred. The breach of the collective agreement in this case did not result in any compensable loss for the Grievor. There is no need for any remedial order to make him whole.

By acknowledging that it breached the collective agreement and allowing the grievance, the Hospital has made the "tangible and concrete" dispute between the parties disappear and the issue in the case has become academic. Moreover, as set out, the Grievor suffered no loss as a result of the breach so there are no outstanding remedial issues to be decided. Finally, this is an individual grievance; it is not the kind of case where an

arbitrator would exercise their discretion to hear the matter even though the issue is now moot. Rather, it is a case where, like in *Sault Ste. Marie*, it would be unreasonable to proceed since "the underlying basis for the dispute is an individual matter, which has effectively disappeared." The issue in the grievance has become moot, and no labour relations purpose would be served by litigating the case on the merits.

Examining the cases relied upon by the Union, in addition to the York University, *supra*, case, those cases are also distinguishable on their facts. The facts in Children's Aid Society of Toronto and Canadian Union of Public Employees, Local 2361, 2020 CarswellOnt 6849 (Knopf) involved both a failure-to-accommodate grievance and a harassment grievance arising from the grievor's return to work on a modified basis following a motor vehicle accident. One aspect of the failure-to-accommodate grievance was the apparent failure to provide an option to work from home, which the Union asserted was not consistent with a "Work from Home" Letter of Understanding that was part of the collective agreement. In rejecting the employer's mootness argument, Arbitrator Knopf noted that adjudicating the issues may help the parties address similar situations involving the Letter of Understanding and the Code. In the case at hand, there is no collective agreement provision that the adjudication of this matter may assist in interpreting its application. Moreover, in the Children's Aid Society of Toronto, *supra*, case, there was additionally a specific allegation of bullying by a supervisor, which Arbitrator Knopf determined, quite rightly in my view, could not be washed away by time. In this case, given the ruling on the scope of the grievance, I have no jurisdiction to inquire into bullying or harassment allegations set out in the Union's particulars. Finally, it is noted that the grievor in that case was still an employee of the employer at the time of the hearing.

With respect to Hilltop Manor Cambridge and Service Employees International Union, Local 1 (2018) 295 L.A.C. (4th) 17 (Luborsky), the facts involved a claim by the union that work associated with the RAI Coordinator classification constituted bargaining-unit work that could not be assigned to individuals outside the bargaining unit. The two grievances before Arbitrator Luborsky concerned the assignment of the work in question to members of management. In the intervening period between the filing of the grievances and the hearing, the employer stopped assigning the work to members of management and instead assigned it to RNs who were members of ONA. The employer argued that the subject matter of the grievances, the alleged improper assignment of the work to management, had become moot. On that point, it indicated that it was willing to pay union dues to SEIU for the period during which the work was assigned to management. In rejecting the Employer's mootness argument, Arbitrator Luborsky, again quite rightly in my view, ruled that there remained a live issue with respect to the union's collective agreement claim that the work in question fell under the exclusive jurisdiction of SEIU. As previously indicated, in the case at hand there is no collective agreement issue that would be decided by the grievance pertaining to the Grievor.

Arbitrator Luborsky again addressed a claim that a grievance be dismissed on account of mootness in Regional Municipality of Waterloo and Canadian Union of Public Employees, Local 1883 (2008) 171 L.A.C. (4th) 107 (Luborsky). The facts of that case involved an employee who hit a deer in the early morning while driving to work. She subsequently developed post-traumatic stress syndrome (PTSD) triggered by driving in the dark. The Grievor sought a temporary work accommodation to shift her morning

start time by an hour so she would commence her commute to work after daybreak. A primary reason for rejecting that request was the employer's position that the duty to accommodate did not apply until an employee arrived at their workplace.

Notwithstanding that at the time of the hearing, the Grievor had recovered from her PTSD, so the need for an accommodation was no longer relevant; Arbitrator Luborsky denied the employer's mootness argument, reasoning in part that adjudication of the issue may assist the parties in the future with respect to the employer's claim that the duty to accommodate was limited to when an employee was at work. Again, as outlined, adjudication of this matter would not necessarily assist if a family status accommodation issue arose in the workplace in the future.

In conclusion, the scope of grievance over which I have jurisdiction is limited to the Employer's denial of the family status accommodation sought by the Grievor. It has further been determined that due to the Employer allowing the Grievor to arrive at work late for the remainder of the time her son was at school during the 2023/2024 school year, and because the Grievor was able to make other arrangements for her son to commute to school for the majority of the 2024/25 school year, the accommodation issue was effectively rendered moot. The sole live issue is a standalone assertion by the Grievor that her supervisor rejected her request for an accommodation in relation to the March and April 2024 period; with no assertion that the Grievor was in fact disciplined or in any way reproached for arriving at work late during that period, or that she incurred any financial or other costs, or was otherwise adversely impacted with respect to that particular allegation. Accordingly, as previously outlined, it would serve no labour relations purpose for the parties to incur further time and resources in the

adjudication of a matter involving a former employee where the relevant facts pleaded suggest that the chances of a claim of discrimination would be made out are remote at best, and that if it were successful, the awarded relief would likely only be in the form of a declaration. Accordingly, the Employer's preliminary motion is upheld, and the grievance is dismissed.

This Award is issued in Mississauga this 27th day of August 2026.

"Brian Sheehan"

Brian P. Sheehan