

IN THE MATTER OF AN ARBITRATION

BETWEEN

HYDRO ONE INC.

(“Hydro One”)

and

POWER WORKERS’ UNION

(the “PWU”)

GRIEVANCE: HO-WS-2008

CHIEF ARBITRATOR: John Stout

APPEARANCES:

For Hydro One:

Daniel McDonald, Norton Rose Fulbright Canada LLP

For the PWU:

Donald K. Eady, Paliare Roland LLP

Kate Shao, Paliare Roland LLP

HEARING HELD BY VIDEOCONFERENCE ON JANUARY 14, 2025

AWARD

1. A conference call was convened on January 14, 2025 to address a number of grievances. This award pertains to grievance HO-WS-2008, which I earlier addressed in my July 18, 2024 Monthly Award.
2. This grievance concerns a family status accommodation request by the grievor. The grievance was resolved by the parties entering into Minutes of Settlement (MOS). I remain seized over any dispute arising from the MOS.
3. I understand that the grievor has recently signed a Homeworker Agreement. The Homeworker Agreement essentially permits the grievor to work from home, subject to various reasonable requirements relating to her performance. This work from home arrangement was agreed upon in the MOS and it provides a form of accommodation, responding to the grievor's request to work from home so she can care for her spouse. The arrangement was agreed upon on a without prejudice basis and Hydro One maintains their position that no accommodation was necessary or required in the circumstances.
4. In *Central Okanagan School District No. 23 v. Renaud* [1992] 2 SCR 970, the Supreme Court of Canada further commented on the accommodation process and the duty of a complainant:

The search for accommodation is a multi-party inquiry. Along with the employer and the union, there is also a duty on the complainant to assist in securing an appropriate accommodation. The inclusion of the complainant in the search for accommodation was recognized by this Court in *O'Malley*. At page 555, McIntyre J. stated:

Where such reasonable steps, however, do not fully reach the desired end, the complainant, in the absence of some accommodating steps on his own part such as an acceptance in this case of part-time work, must either sacrifice his religious principles or his employment.

To facilitate the search for an accommodation, the complainant must do his or her part as well. Concomitant with a search for reasonable

accommodation is a duty to facilitate the search for such an accommodation. Thus in determining whether the duty of accommodation has been fulfilled the conduct of the complainant must be considered.

This does not mean that, in addition to bringing to the attention of the employer the facts relating to discrimination, the complainant has a duty to originate a solution. While the complainant may be in a position to make suggestions, the employer is in the best position to determine how the complainant can be accommodated without undue interference in the operation of the employer's business. When an employer has initiated a proposal that is reasonable and would, if implemented, fulfil the duty to accommodate, the complainant has a duty to facilitate the implementation of the proposal. If failure to take reasonable steps on the part of the complainant causes the proposal to founder, the complaint will be dismissed. The other aspect of this duty is the obligation to accept reasonable accommodation. This is the aspect referred to by McIntyre J. in *O'Malley*. The complainant cannot expect a perfect solution. If a proposal that would be reasonable in all the circumstances is turned down, the employer's duty is discharged.

5. The protections found in the *Code* are related to fostering equality and diversity, they do not involve providing special treatment or preferences. Accommodation is about inclusion, not providing additional benefits or preferences to certain employees. The duty to accommodate involves all parties working towards a reasonable resolution that will allow the employee to participate in the workplace and earn a living. The duty to accommodate does not require an employer to accept poor work performance or change working conditions in a fundamental way. Rather, the employer has an obligation to reasonably arrange the employee's workplace or duties to enable the employee to do their work, see *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, [2008 SCC 43](#), [2008] 2 S.C.R. 561.

6. I expect the parties and the grievor to implement the MOS in the same manner as any other form of accommodation. The grievor is required to facilitate the work from home arrangement by providing reasonable documentation to substantiate the ongoing need for accommodation.

7. I remain seized.

Dated at Toronto, Ontario this 16th day of January 2025.

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke extending to the right.

John Stout - Chief Arbitrator