

**IN THE MATTER OF EXPEDITED MEDIATION/ARBITRATION
BETWEEN**

HYDRO ONE INC.

(“Hydro One”)

and

POWER WORKERS’ UNION

(the “PWU”)

GRIEVANCE NUMBER: HO-WS-2019

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 JANUARY 14, 2025

AWARD

1. The parties appeared before me on January 14, 2025. This award pertains to grievance HO-WS-2019, which I have previously addressed in my September 5, and October 10, 2024 Monthly Awards.
2. The grievance concerns a claim by the PWU that Hydro One violated the Collective Agreement and the Ontario *Human Rights Code* (the “Code”) by denying the grievor sick leave. The grievor has been absent from work since March 13, 2023. The grievor was approved for sick leave benefits from March 13, 2023, until September 3, 2023.
3. In my September 5, 2024, award, I indicated that on a without prejudice basis, the parties are to jointly engage and equally pay for a physician to perform an independent medical examination (“IME”) and provide the parties with a report. The IME was scheduled for October 23, 2024.
4. I also noted in my September 5, 2024, award, that without prejudice to the PWU’s claim for sick pay, the grievor shall draw upon his vacation entitlements until the next hearing date.
5. In my October 5, 2024 award, I ordered Hydro One to permit the grievor to draw upon his 2025 sick leave/vacation entitlements, without prejudice to the PWU’s claim for sick pay.
6. I understand that the IME report has been provided to the parties and a return to work meeting has been scheduled for early next week. I have also been advised that the grievor may run out of sick credits and vacation entitlements before the next scheduled hearing date in February 2025.
7. If the grievor is not returned to work, then he may draw sick credits and if such sick credits are depleted then he may draw any vacation entitlement. If the grievor runs out of both sick credits and vacation entitlement, then Hydro One shall

pay him an amount equal to his sick pay credits on a without prejudice basis until the February hearing date. If the Grievor refuses a reasonable offer to return to work, then he may draw upon his vacation entitlement, but Hydro One will have no obligation to pay him any sick credits.

8. I wish to remind the parties of their obligations under the *Code*. In *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, at paras. [12 and 16](#), the Supreme Court of Canada elaborated on the undue hardship criteria:

What is really required is not proof that it is impossible to integrate an employee who does not meet a standard, but proof of undue hardship, which can take as many forms as there are circumstances. . . .

. . .

The test is not whether it was impossible for the employer to accommodate the employee's characteristics. The employer does not have a duty to change working conditions in a fundamental way, but does have a duty, if it can do so without undue hardship, to arrange the employee's workplace or duties to enable the employee to do his or her work.

9. 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.

10. 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.

11. 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