

In the Matter of a Labour Arbitration pursuant to the *Ontario Labor Relations Act*

Between:

Ontario Secondary School Teachers' Federation

(the "Union")

-and-

Simcoe County District School Board

(the "Employer")

**Alleged Breach of Minutes of Settlement Re: Absence Investigation Emails Grievance -
ARB-23-0343 (Absence Trend)**

Arbitrator: Randi H. Abramsky

Appearances:

For the Employer: Lauri Reesor, Counsel

For the Union: Jesse Gutman, Counsel

Hearing: May 15, 2025 via video conference. Written submissions received on March 28 and May 5, 2025.

AWARD

1. On September 5, 2024, the parties negotiated Minutes of Settlement (MOS) in regard to a policy grievance involving “Trend Absence” letters and emails. The Union asserts that the Employer has breached this MOS when it sent “Pre-Absence Trend” (“PAT”) emails to four members of the bargaining unit in violation of para. 2 (c) of the MOS. The Union had raised a second issue regarding the Board’s failure to meet with employees but withdrew that claim at the hearing.
2. The parties proceeded by way of written submissions, with a hearing to address any questions that arose.

Facts:

3. On September 5, 2024, the parties entered into MOS which states, in pertinent part, as follows:
 2. Pre-Absence Trend Emails
 - (a) The Board agrees to CC the Union on all trend absences “pre-absence” emails.
 - (b) The Board agrees that the threshold for sending trend emails is a trend of at least three years or more.
 - (c) The parties understand that nothing in this settlement prevents the Employer from sending a trending absence email for a pattern of absences within a single year (such as weekend or holiday adjacent absences or patterned absences on PA Days). Correspondingly, nothing prevents the Union from questioning such trends in absences.
4. There is no dispute that, since September 5, 2024, the Board has copied the Union on all trend absences “pre-absence” emails. No issue has been raised in respect to para. 2(b). The Union claims, however, that the Board has breached para. 2(c) by sending PAT letters to individuals “with a *single absence* within a *single year*.” (emphasis in original). The Union also claimed that the letters were sent for a “single absence event.” The Board disputes this. It asserts that in each of the four

cited examples, the employee had two absences connected to a weekend, not a single absence, and consequently, fell within the ambit of para. 2(c) of the MOS, since there was a “pattern of absences” connected to a weekend or holiday.

5. At the hearing, the Union acknowledged that the examples involved two absences, not one. But it maintained that this still did not constitute a “pattern of absences” within the meaning of the provision. In its view, there must be “multiple” instances to create a “pattern of absences” before a PAT email may be sent to an employee. The four examples cited by the Union are as follows:

1. L.S. – May 2, 2024 Lieu Day
May 3, 2024 Personal Day
May 4-5, 2024 Weekend
2. C.L.P. May 24, 2024 Lieu Day
May 27, 2024 Personal Illness
May 25-26, 2024 Weekend
3. K.R. - May 30, 2024 Family Medical
May 31, 2024 Personal Day
June 1-2, 2024 Weekend
4. M.H. June 10, 2024 Medical Appointment
June 11, 2024 Personal Day
June 8-9, 2024 Weekend

Reasons for Decision

6. Both sides cited case law and various other provisions and statutes, along with dictionary definitions regarding the word “pattern”. The Union cites to the following cases: *Re Toronto District School Board and CUPE Local 4400*, 2020 CanLII 103772 (Stout); *Re WCAT-2008-00216*, 2008 CanLII 9212 (BC WCAT); *Re Toronto District School Board and CUPE Local 4400*, 2022 CanLII 58190 (White); *Re Toronto District School Board and*

CUPE Local 4400, 1999 CanLII 35841 (Knopf); *Re Toronto District School Board and CUPE Local 4400*, 2015 CanLII 71806 (Steinberg); *Re District School Board Ontario North East and OSSTF*, 2012 CanLII 907806 (Davie); *Re Ontario English Catholic Teacher' Association and Waterloo Catholic District School Board*, 2024 CanLII 86110 (Wilson); *Re Toronto Catholic District School Board and Ontario English Catholic Teachers' Association*, 2007 CanLII 51522 (Randall); *Re Windsor-Essex Catholic District School Board and OECTA*, 2008 CanLII 11043 (Albertyn); *Re Toronto District School Board and CUPE Local 4400*, 2003 CanLII 52783 (Albertyn). The Employer cites to *Re Ontario (Ministry of the Solicitor General) and OPSEU (Frater)*, 2021 CanLII 7233 (Wasyck, GSB); *Re Humber River Regional Hospital and Ontario Nurses' Association*, 2017 CanLII 54356 (Goodfellow); *Re Bencharski and Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 75 (CanLII). Both parties argued that the interpretation of the words “pattern of absences” should be based on the “plain and ordinary” meaning of the words used by the parties.

7. Having carefully considered the facts, the case law and the submissions of the parties, I am not persuaded that a breach has occurred.
8. There seems little doubt that had the two absences adjacent to a weekend taken place on separate weekends, the Union would not have asserted that a “single absence” or single “absence event” took place. It appears that the fact that the two absences took place in relation to a single weekend led the Union to assert that this was a single absence or single absence event in a single year. Yet this fact is what concerned the Board, since the two absences combined with a weekend created, in effect, a “long weekend.”
9. The Union took significant umbrage to the Board’s assertion that the absences created a “long weekend”, since, in its view, that implies that the employees may have been engaged in culpable conduct. There was no evidence at all that this was the case, and no suggestion by the Board that misconduct had occurred. The issue here is not whether improper conduct occurred. Rather, the issue is whether the Board’s inquiry, through the PAT letter, in these specific circumstances, breached the terms of para. 2(c).

10. The case law supplied by the Board is that a “pattern” may involve “more than one instance.” *Re Ontario (Ministry of Solicitor General) and OPSEU (Frater)*, *supra*, at para. 2. While certainly additional examples would make the “pattern” clearer, I agree that to create a “pattern of absences” there must be, at a minimum, two or more absences. In this case, there were two absences tied to a weekend. The absences were not a single absence or a single “absence event.” They were two absences tied to a weekend. The Board argues that the Union’s interpretation would “equate a single absence to a single instance of multiple absences adjacent to a weekend or holiday which is not the language negotiated in the MOS...” I agree.
11. It is also important to note that para. 2(c) clarifies that the terms agreed to by the parties in para. 2(a) and (b), do not preclude the Board from sending an email to an employee with respect to a “pattern of absences” within a single year. In para. 2(b) the Board had agreed that “the threshold for sending trend emails is a trend of at least three years or more.” It wanted to be sure that that limitation would not preclude it from addressing a “pattern of absences” within a single year.
12. Both parties recognize that sick leave usage is a legitimate management concern. The opening of the Union’s submissions quoted a decision by Arbitrator Stout in *Re Toronto District School Board and CUPE Local 4400*, *supra*, at para.85:

I must note that it has been my experience, and well documented in many arbitration decisions, that there exist certain individuals who take advantage of sick leave benefits to take a day off work for reasons unrelated to illness or injury. ...

13. The Board’s PAT emails, where there is a “pattern of absences” tied to a weekend or holiday, is part of the process to ensure the integrity of sick leave use. Given that there were two absences tied to a weekend in each case, I am not persuaded that the Board violated the MOS.

Conclusion:

14. For the reasons set out above, I am not persuaded that the Board breached para. 2(c) of the MOS.

Issued this 17th day of June, 2025.

Randi H. Abramsky

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