LEGAL UPDATE

January 11, 2021

OCHU
ONTARIO COUNCIL OF HOSPITAL UNIONS
CUPE

This is an update on the central grievances and arbitrations this past year. Due to the current pandemic our focus has somewhat shifted to different types of cases, including but not limited to: personal protective equipment grievances and Bill 195 (emergency powers).

RECENT ARBITRATION AWARDS

CUPE Local 786 v. St. Joseph's Healthcare Hamilton, December 7, 2020 (Gail Misra)

This case was regarding if an employee should be drawing from their sick bank if a statutory holiday falls during their sick leave. The member in this case was on sick leave and 3 statutory holidays (Good Friday, Easter Monday and Victoria Day). The employer coded these days as a stat but, in fact, funded them through the members sick bank and reducing their sick leave entitlement by 3 days. The panel chaired by Gail Misra ultimately agreed with the union. The member received 3 days of added sick time to their entitlement. This is a great award for the union, and you will see in the full report the arbitrator set out some principles regarding HOODIP for future cases. It is clear that during statutory holidays, employees are not off work due to illness or disability, but rather because those days are statutory holidays, for which employees are entitled to statutory holiday pay under Article 16.02 of the collective agreement.

CUPE Local 3000 v. Winchester District Hospital, December 9, 2020 (Kaplan)

This grievance arose when the Hospital used the occasion of an RPN's retirement to eliminate her position. Although the Hospital met with the Union about this, it did not form a Redeployment Committee to consider alternatives to the elimination, nor did it post the position as a temporary vacancy for the duration of the five-month notice period.

Arbitrator Kaplan decided the hospital was in violation of article 9.08, as they did not convene the redeployment committee to discuss alternatives. He also confirmed that the status quo must remain and in this case the position was to be maintained for the notice period. He also made it clear that because the work was no longer there due to reduced patient capacity, and the fact that no employee was impacted that the hospital did not need to post the position.

This case confirms the mandate of the redeployment committee and was a great win for our members.

Members participating in the June 17 sticker day in support of pandemic pay for all health care workers

CUPE Local 2628 v. Northumberland Hills Hospital, November 18, 2020 (Sheehan)

This case concerns Article 9.07(B) – portability of service.

We had an RPN that did not receive full credit for her previous experience and ultimately was placed on the wage grid at a lower rate.

The employer argued that probationary period and working at the previous hospital after date of hire at Northumberland Hills should not count when discussing 9.07(b)

The union was not successful with this case, but the award does provide clarity on this article.

Members participating in the July 17 Bill 195 day of action

JUDICIAL REVIEWS

We have two ongoing judicial reviews.

The first is from local 7800 where Arbitrator Newman delivered a major central arbitration victory regarding the interpretation and application of Articles 9.08(B) (early retirement) and 9.08(C) (voluntary exit), when she determined that hospitals must offer retirement and voluntary exit packages to all employees in a classification, whether they are full-time or part-time, regardless of whether the hospital intends to lay off a full-timer or a part-timer. The employer is arguing that the award delivered by Newman is unreasonable. Please take a moment to read this in your reports.

The second case is from local 5852. This review was called for by the employer after Arbitrator Gedalof awarded that the wage harmonization should be done at the highest rate. The Divisional Court relied on the Supreme Court of Canada's recent decision in Vavilov, which altered the approach to judicial review.

The good news for us, despite the decision in favor of the employer, is that the original wage harmonization case was referred back to Gedalof. With further reasoning from him we expect the same decision.