

ONA WINS



SUMMARY OF ANOTHER SUCCESS AS YOUR UNION STRIVES TO IMPROVE YOUR WORKING CONDITIONS

Landmark Win for ONA at Court of Appeal Emphasizes Importance of Layoff Rights

ONA has received a major victory at the Ontario Court of Appeal on the issue of layoff rights, which overturns the judicial review of a decision by Arbitrator Felicity Briggs.

The case began when a hospital, located in a large urban centre, closed 11 beds on one of its units, which reduced the total hours of work available for regular part-time (RPT) nurses. Following the closure, the hospital scheduled all RPT nurses on the unit below their commitment without regard for seniority and without applying the layoff provisions.

The Grievance

ONA grieved that the hospital's scheduling decisions constituted a layoff, and its failure to lay nurses off in reverse order of seniority and provide layoff options under Article 10 violated the collective agreement.

ONA was successful at arbitration, with the arbitrator concluding that while there was no requirement to schedule RPT nurses up to commitment if there was no work available, in this case, there was work and the hospital had triggered the collective agreement's layoff provisions by reducing the working hours of its RPT nurses below commitment with no regard for seniority.

The Judicial Review

The hospital judicially reviewed the decision and at the Divisional Court, the arbitrator's award was set aside. The court determined that the decision was "internally inconsistent" because while the arbitrator found there was no requirement to schedule to commitment if no work was available, she then found that layoffs were triggered if nurses were not scheduled to commitment.

ONA was granted leave to appeal the award on the grounds that the Divisional Court erred in wrongly applying the reasonableness standard of review by substituting its own decision for that of the arbitrator.

The Appeal

On appeal, ONA argued that the arbitrator's answers to the two questions before her are consistent, as they address different scenarios:

- 1.) Where no work is available.
- 2.) Where there is "less" work to be done.

We further argued that the arbitrator's decision that where an RPT nurse has been scheduled to commitment and her hours are then reduced on the next posted schedule, a layoff is triggered, is consistent with the terms of the collective agreement. The arbitrator reasonably concluded that the hospital's refusal to schedule RPT nurses up to their commitments constituted a reduction of...hours of work" that triggered the layoff provisions. We argued the hospital breached Article 10.09(b)(iii)(C) by reducing the working hours of all RPT nurses without regard to seniority to avoid laying off the most junior RPT nurses.

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The employer argued that the Divisional Court was correct and that the arbitrator's decision could not be upheld as there was no guarantee of hours up to commitment in the collective agreement.

The Decision

The Court of Appeal agreed with all of ONA's positions and held that:

- 1.) The arbitrator's answers to the two questions before her were internally consistent.
- 2.) The arbitrator's decision that this reduction in hours triggers a layoff is consistent with the collective agreement.
- 3.) It was reasonable for the arbitrator to conclude that the hours for which each RPT nurse has committed to work is a suitable contractual benchmark for applying the layoff provisions of the collective agreement.
- 4.) It was reasonable for the arbitrator to conclude that the hospital's uniform reduction of RPT hours contravened Article 10.09(b)(iii)(C) of the collective agreement.

"This is a landmark win for ONA," said ONA President Vicki McKenna. "The Court of Appeal's detailed reasons emphasize the importance of layoff rights in the context of the fundamental importance of seniority protections for union members."

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