

ONA WINS



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

Nurse terminated after employer alleges three shifts were missed without notification is reinstated

Hospital

(Arbitrator Harris, February 24, 2017)

ONA has won an important arbitration reinstating a nurse whose employment was terminated pursuant to the “deemed termination” provisions of the collective agreement, which provides that if a nurse is absent from scheduled work for three or more consecutive shifts without notifying the hospital and providing a satisfactory reason, the hospital is entitled to terminate her employment.

In this case, the grievor was on an approved sick leave. Her treating physician had initially estimated that she would be off work until at least January 31, 2016. On January 31, 2016, the grievor was hospitalized as she was undergoing surgery.

She provided an updated medical certificate on February 4, 2016, but by then the employer had terminated her employment, arguing that she had failed to provide any explanation for her failure to return to work on January 31, 2016 in advance of that date.

The arbitrator agreed with ONA’s argument that the employer violated the collective agreement in terminating the grievor’s employment. He concluded that the grievor was not scheduled to work on January 31, 2016 and had not missed three scheduled shifts.

In coming to this conclusion, the arbitrator relied on the fact that the employer had not held a return to work meeting with the grievor to determine whether any modifications or graduated return to work was required.

He also found that the employer was aware that the grievor was on sick leave and that it should have contacted her, giving her the opportunity to explain. Finally, he found that she had a satisfactory reason for her absence.

The arbitrator reinstated the grievor to her employment with full compensation.

Importance to ONA: This decision confirms that the circumstances in which an employer can rely upon the “deemed termination” clause to terminate the employment of an ONA member will be narrowly construed.

(Front Lines, May/June 2017 edition)

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