

ONA WINS



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

Probationary nurses entitled to same Human Rights Code protection as long-service employees

Hospital

(Arbitrator Levinson, November 30, 2016)

ONA has won an arbitration decision challenging a hospital's decision to terminate the employment of a probationary nurse for theft of narcotics in a situation where the nurse was subsequently diagnosed with a substance dependence that directly caused the misconduct.

The employer found discrepancies in narcotic counts after performing an audit, which was ordered after receiving reports of strange behaviour by the grievor. Although the grievor initially denied taking the narcotics, within hours she disclosed to her union representative that she was suffering from an addiction to narcotics and needed help.

The union representative and grievor advised the employer of this the next morning. Despite that, the employer terminated her employment, having never asked her whether she was addicted to narcotics.

The arbitrator found that the termination was discriminatory and also had elements of arbitrariness. He found that the employer had actual knowledge of her disability and its relationship to her work performance. Alternatively, the arbitrator found that the employer had constructive notice of the grievor's disability given all the information in its possession at the time of the termination.

Importance to ONA: This case confirms that probationary nurses are entitled to the same protection under the Human Rights Code as long-service employees.

(Front Lines, March/April 2017 edition)

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