

POOR ATTENDANCE MAY LEAD TO DENIAL OF PROMOTION

CUPE, Local 1263 V. West Park Health Centre (Campbell Grievance) [1999] O.L.A.A. No. 929
An Unreported Decision of Arbitrator Faubert dated December 6, 1999

Facts

The Grievor filed a grievance alleging that she should have received a posted position in preference to the successful applicant, who had less seniority than the Grievor. The company argued that the Grievor was denied the position on the basis of her record of absences. The collective agreement in question contained a threshold clause, obliging the employer to make promotion decisions on the basis of seniority, provided the senior applicant is qualified for the position.

The requirement of a good attendance record was listed in the job posting, and the job description for the position provided that a good attendance record was a required qualification. The average rate of absenteeism in the workplace was 12 days each year. Over the four years preceding the filing of the grievance, the Grievor had annual absences of between 25 and 38 days. She had been advised in performance evaluations that she should make an effort to reduce her high absenteeism rate. She had also received two counseling letters regarding her absenteeism rate. Additionally, the employer issued a verbal warning for absenteeism to the Grievor in the month that the job in question was posted.

Arbitrator's Decision

The Arbitrator dismissed the grievance, finding that it was reasonable for the employer to consider the Grievor's ability to regularly attend work in assessing her qualifications for the job in question. The Arbitrator concluded that a good attendance record was an appropriate requirement for the position in question on the following basis:

1. The job posting in question specifically provided that a good attendance record was a requirement of the job.
2. The nature of the position requires regular attendance in order to ensure that the needs of individual patients are met.

The Grievor's record of absences significantly exceeded the absences of the average employee. Her absences were due to chronic personal problems which had resulted in unpredictable absences in almost every month of her employment. The Grievor had been warned that her attendance record was unacceptable and had been given an opportunity to explain the causes of her absenteeism. The Grievor's past record led the Arbitrator to believe that the Grievor would not likely have been able to meet the attendance requirement had she been granted the position in question.

Conclusion

David Wakely won a similar case before Arbitrator Ellis in the unreported decision of *TRW (Linkage & Suspension Division) (Brooks Grievance)* dated March 15, 1999. In that case, Arbitrator Ellis concluded that a good attendance record need not be an explicit job requirement in cases where good attendance is clearly required for a particular position.

Nonetheless, employers who wish to rely on the poor attendance record of an employee in denying an employee a promotion should ensure that a good attendance record is an explicit requirement listed in the job posting. The employer should also ensure that any employee disqualified because of his or her attendance record has an absenteeism record that significantly exceeds the average, has not demonstrated that his or her attendance record is likely to improve, and has been notified that his or her attendance record is unacceptable.