Nurse Who Misappropriated Narcotics Reinstated

February 27, 2019

A new labour arbitration decision in *The Regional Municipality of Waterloo (Sunnyside Home) v. Ontario Nurses' Association*2019 CanLII 433 reminds employers that the duty to accommodate may be engaged when an employee's breach of a workplace rule is connected to a substance abuse disability.

Background and Decision

D.S., a registered nurse working as team leader at a long-term care home, was discharged for cause following an investigation that confirmed she repeatedly misappropriated narcotics for her own use, and falsified medical records to cover up her misconduct, for a period of approximately two years. D.S. also admitted that she failed to give residents the correct dosages of injections.

Following her discharge, D.S. attended and completed an inpatient rehabilitation program and entered into an agreement with the College of Nurses, establishing various conditions under which she could practice nursing, including that she could not administer narcotics and had to be supervised on every shift.

The Ontario Nurses' Association grieved the discharge, but accepted at arbitration that D.S.'s actions constituted severe misconduct for someone in her position, and would have constituted grounds for her dismissal in different circumstances. The Union argued, however, that D.S. was struggling with an addiction, that the employer failed to accommodate her disability, and that the termination of her employment was discriminatory. The union sought reinstatement, in part on the basis that D.S. could continue to work as a nurse under the conditions imposed by the College of Nurses.

On the evidence, Arbitrator Steinberg found that D.S. had no control over her urges and had no capacity or had diminished capacity to make decisions about misappropriating narcotics or following the workplace rules — meaning there was a nexus between D.S.'s disability and the workplace conduct.

Arbitrator Steinberg also found that the employer never treated D.S.'s circumstances as a human rights case, and never considered how it could accommodate her disability by changing the workplace or organization of work.

Ultimately, Arbitrator Steinberg agreed with the union and concluded that the employer failed to meet the procedural component of its duty to accommodate and further failed to demonstrate that it could not accommodate D.S. in the workplace without undue hardship.

Arbitrator Steinberg ordered the employer to reinstate D.S. with accommodation, up to the point of undue hardship. The employer was ordered to bear in mind the conditions within the agreement D.S. entered into with the College of Nurses. The employer was also directed to consider the conditions within the agreement between D.S. and the College of Nurses in determining how to accommodate her.

Takeaway

The decision reminds employers that where an employee has an addiction and there is a nexus between the disability and the breach of a workplace rule, automatic discharge may not be appropriate, and the duty to accommodate will be engaged. This does not necessarily mean that no discipline will be appropriate, nor does it necessarily mean that discharge will not ultimately be the appropriate consequence imposed, but employers must engage in the accommodation process, and analyze the employee's individual circumstances and all possible outcomes, before making a determination on the course of action to be taken

By

Stephanie Young

Expertise

Health Care & Life Sciences

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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