

In the Matter of an Interest Arbitration.

Between

Garda World Security Screening
[Employer]

And

International Association of Machinists and Aerospace Workers, District 140
[Union]

And

In the Matter of March Arbitrations

Before: M. Brian Keller, Arbitrator

For the Employer: Stefan Prabhu, Jori Xhuvani, Denis Boucher

For the Union: Tayeb Lharti

Hearing by videoconference on March 21, 2022

Award

Group - No Call/No-Show - SC15636

This award deals with a group grievance filed by the Union at Toronto in response to the employer disciplining a number of employees for failing to notify the employer that they would not be attending at work. Not calling and then subsequently not attending work, is called no-call/no-show.

It might be the understatement of the year that the employer has experienced issues with employees who fail to call in to work and then do not attend at work. The uncontradicted evidence of the employer is as follows:

In 2018, there were 5638 incidences of no call/no-show's.

In 2019, there were 6489 incidences of no call/no-shows.

In 2020, there were 3846 incidences of no call/no-shows. Many employees were on layoff for at least part of the year.

In 2021, there were 4529 incidences of no call/no-shows. Many employees were on layoff for at least part of the year.

From January 1, 2022 until March 5, 2022, there were 1251 incidences of no call/no-shows.

Over that same period in 2022, the absenteeism rate was just slightly over 22%.

Prior to the pandemic, there were approximately 2540 screening officers. As a result of the layoffs, that number dropped to 1297.

Approximately 29% of employees declined their recall.

The employer is obligated to provide screening services in accordance with its contract with CATSA. The result of the no call/no-shows is that the employer was finding itself without sufficient staff to properly run their operations. Consequently, it determined that it could no longer ignore the problem and, on July 26, 2021, issued a bulletin entitled Attendance Concerns.

The bulletin dealt with the problem of no call/no-shows and other attendance related issues. Employees were informed that, if they needed the book off, they were to do so in a timely manner so that alternate arrangements could be made to cover the missed shift. In addition, the Bulletin provided:

"Progressive discipline up to and including termination of employment may apply in cases of abuse or un-substantiated (sic) absences from work."

On August 20, 2021, another bulletin was issued dealing with the same issues. It warned, as did the first bulletin, of disciplinary measures in the event of noncompliance for no call/no-shows, tardiness, and leaving before shift end.

Notwithstanding the Bulletins, the problems and issues continued. Consequently, the employer decided that it had no option except to commence disciplining employees for no call/no-shows. The result was the one-day suspensions that are the subject of this award.

The issues of no call/no-shows, tardiness, absenteeism, and leaving early from work have plagued this employer for years. The issues had been brought to the attention of employees through employer bulletins and arbitration awards. Apparently, as is seen from the statistics quoted above, there has been little, if any, effect on the pattern of behaviour exhibited by many employees.

The Union makes a number of arguments in support of the grievance. One of the arguments is that the employer is moving the issue from absenteeism to performance without following progressive discipline. First, while tangentially it is an issue of absenteeism, it is in my opinion, an issue of performance and, thus, subject to discipline. In the particular case of no call/no-shows, employees are being disciplined, not for absenteeism, but for not showing up at work and not calling the employer as they are supposed to, and as has been reinforced by the two bulletins referenced above.

The Union also argues that the Company has not followed progressive discipline. As I have written on numerous occasions in dealing with these parties, the employer is not obligated to always followed progressive discipline and, in particular, is not obligated to always commence discipline with an oral or even written warning. Where discipline commences will depend on the circumstances. Again, as I have written in the past, there is nothing that precludes, for example, discharge without previous discipline were circumstances warrant.

The Union further argues that the employer has changed the long-standing practice. That may well be the case but, in the circumstances, there were exigent circumstances that warranted doing so and, in any event, employees were put on notice of the employer's intentions that were necessitated for very valid reasons.

It is my opinion that a reset is required. The purpose of the reset is to ensure that employees [who should be aware, but claim that they are not] are well aware of the expectations of the employer and of the consequences of not following the no call/no-show directive. This reset is not meant to imply, nor is it a finding, that the employer has somehow violated the collective agreement.

Accordingly, I Order as follows:

1. The Union will have until 5 PM on the day this award is issued to present all outstanding/on hand grievances pertaining to no call/no-show receiving a 1-day suspension. Those grievances will be dealt with as reflected below.
2. The one-day suspensions will be reduced to a Letter of Expectation. (LOE)
3. The Grievors whose names are presented to the employer will be advised in the LOE that no call/no-show is not an acceptable practice, and that they must cease and desist that action immediately. Should they need to be absent from their shift, they will be required to utilize their shift trade privileges first, or if that is not possible, **then book off from their shift using the employer's applicable process.**
4. The employer will post a bulletin to all employees advising them of the expectations referred to in paragraph three above. The bulletin will clearly indicate that a failure to adhere to this policy will result in discipline starting with a 1 Day Suspension (1DS), and progressing up to and including termination for further similar incidents.
5. Nothing in this award amends or replaces the language in article 9, section 9.1 [b] of the collective agreement.

6. This award deals conclusively with all no call/no-show grievances where employees were given a one-day suspension and that were presented to the employer in accordance with paragraph one above.
7. I remain seized to deal with any issues related to the implementation, interpretation, or alleged violation of this award.

Ottawa, this 4th day of April, 2022

A handwritten signature in black ink, appearing to read 'M. Keller', is written over a rectangular box.

M. Brian Keller, Arbitrator