

In the Matter of an Arbitration

Between

Garda Security Screening [Employer]

And

International Association of Machinists [Union] And In

the Matter of a Policy Grievance re Attendance

Before: M. Brian Keller, Arbitrator

Hearing in Toronto, July 26, 2012.

Award

On August 2, 2012, the Union filed a policy grievance alleging that the application of the Employer's Regular Attendance Management Program [RAMP] was being applied in a fashion that was arbitrary and discriminatory. The redress sought was that the Employer cease its discriminatory practices.

The evidence on behalf of the Employer is that the absenteeism rate of employees is close to 40%. Surprisingly, this number is even higher on Sundays. The number of no-shows [employees who don't attend work without calling in] is approximately 15%. From the perspective of the Employer, those rates of absenteeism are unacceptably high. It has taken various steps, including formulating its Attendance Management Program to try to deal with that high rate of absenteeism. Unfortunately, there hasn't appeared to be a decrease in the rate of absenteeism notwithstanding the Program.

Latterly, the Employer in an attempt to deal with the issue, has disciplined a number of employees up to and including discharge. A number of individual grievances have been filed, many of which have been resolved by the parties. This policy grievance was filed as well.

It is worthwhile to generally speak about employer's obligations regarding attendance, as well as the Employer's rights and obligations. It should go without saying, but certainly bears repeating, that the fundamental bargain reached between an Employer and an employee is that Employers pay employees for the work that they are hired to perform. Implicit in that, obviously, is that employees are required to attend at work on a

regular basis *to live up to* their side of the bargain. The failure *to attend* at work results in staffing issues for the Employer, more work and stress for employees who do attend at work and, given the nature of the work being performed in this case, a greater potential for security lapses. This latter point clearly has implications not only for the Employer and employees, but for the safety of the flying public as well.

The Employer has the right in law to deal with employees who fail to attend at work on a regular basis. This general right is subject to certain restrictions and obligations which I will talk about below. The right of the Employer to deal with employees who do not attend at work falls into two categories. The first category is what is known as culpable absences. This means that the Employer has the right to discipline employees who fail to attend at work for other than legitimate reasons. This right to discipline can ultimately result in the discharge of an employee. The second category is what is known as non-culpable absences. A non-culpable absence is an absence that is beyond the control of the employee and generally results from a medical condition. The Employer's Attendance Management Program is designed to deal with non-culpable absences. It is important for employees to realize that even if absences result from legitimate medical conditions, there are circumstances in which excessive absenteeism can result in discharge.

In the case of culpable absences, the Employer's right to discipline up to and including discharge, subject to the provisions of the collective agreement. The Employer, generally speaking, has to follow the principles of progressive discipline and has to prove that the absences are within the control of the employee. There are certain indicators that Employers look for *to demonstrate* culpable absences. For example,

Employers look for patterns where employees are absent the day before, the day after, or both days surrounding days off. They look for patterns where employees are consistently away the same day of the week. They look for patterns where employees are absent prior to or just after a scheduled vacation. Where these patterns exist, employees normally will be asked to explain her absences and absent a reasonable explanation discipline can result. In certain cases, where the absences, or pattern of absences are egregious, an Employer may not have to follow the principle of progressive discipline. There are numerous arbitration awards where discharge has been upheld for excessive absenteeism even where there has been no prior discipline.

As indicated above, the Employer has an Attendance Management Program to deal with non-culpable absences. A non-culpable absence is an absence that that does not merit discipline, one that may be beyond the control of an employee. The Program consists of a number of steps and if an employee progresses through the steps, the ultimate result can be discharge. The law permits the Employer to have an attendance management program, and permits the Employer, where circumstances warrant, to discharge an employee for excessive absenteeism. Most programs, including RAMP, seek to find the underlying causes of non-culpable absences. An employee who claims to have a legitimate reason for his or her absences is invited to disclose them to the Employer. Where circumstances warrant, based on legitimate medical information provided to the Employer, an employee may have the right to seek accommodation to deal with an underlying condition. Importantly, where this is the case, it is the responsibility of the employee to make the Employer aware of the situation and ask for appropriate accommodation. It is not the responsibility of the Employer to try to guess

why an employee is not attending at work. Where an employee claims that attendance issues are as a result of a medical condition and/or where an accommodation is being sought, the appropriate, timely medical documentation must be brought to the attention of the Employer.

As indicated above, the Employer has certain obligations or requirements it must fulfill in order to be able to enforce its Attendance Management Program. First, the Program must be in accordance with recognized legal principles. Second, employees must have been made aware of the provisions of the Program. Third, the Program must be enforced in a fair, consistent and equitable fashion. This means that the provisions of the Program must be interpreted, applied and enforced the same way by all managers for all employees.

In the instant case, I am generally satisfied that the actions of the Employer are in accordance with its legal rights and obligations. However, out of an abundance of caution, and to ensure that all supervisors, managers and employees are aware of their rights and obligations, I make the following Directions:

- 1) The Employer will meet with the Union to review the provisions of the existing Plan. Any amendments or changes to the Program in the future will immediately be brought to the attention of the Union.
- 2) Once the provisions of the Program have been reviewed by the parties, it will be brought to the attention of all employees. The Program will be posted in lunchrooms, on the Employer's bulletin boards and on its website. Employees

are to be made aware of the Program and where they can find it by SPM's at their morning briefing.

- 3) Copies of this Award will be given to all employees with their pay stubs as soon as possible to ensure they properly understand the importance of regular attendance and the possible consequences of absenting themselves from work without a valid reason. The Employer may include the Plan as well if it chooses to do so.
- 4) The Employer will ensure that all at supervisors and managers are aware of the importance of administering, and do administer, the Plan in a fair, consistent and equitable manner.

In summary, the Employer has the right to require regular attendance from its employees. It has the right to discipline employees in the case of culpable absences and to administratively deal with employees in the case of non-culpable absences. The actions of the Employer must be fair, consistent and equitable. Where an employee has a legitimate reason for its absences, it must bring that reason to the attention of the employer with appropriate and timely documentation.

Signed in Ottawa, July, 27, 2012.



M. Brian Keller, Arbitrator