

TOPIC: Access to Sick Leave and Sick Leave Benefits

Applicable Articles: Article 18 SUN/SAHO Collective Agreement

April 1, 2012 - March 31, 2014

Grievance sets out CBA sections: 1 to 4, 6 to 8, 14, 17 to 19, 25 37, 64, 62 and 63

Arbitration Case Critique

PAPHR-S-5636-2013 SUN v. Prince Albert Parkland Health Region

GENERAL ISSUE

Whether the Wellness policies unilaterally implemented by PAPHR violated the Collective Agreement and/or were unreasonable.

FACTS:

PAPHR introduced Wellness Policy and Procedures in 2013 which contained requirements that:

- Employees to follow a two step call in procedure to report illness
- Sick leave benefits could only be accessed after the Organizational Wellness Consultant spoke directly with the employee and then verified the time as sick time
- The Organizational Wellness Consultant had the ability to request medical information to verify sick leave by way of a HCP form
- Sick calls were considered “unverified” and not paid until the Organizational Wellness Consultant had verified

In addition to challenging the above, SUN argued that the Wellness Policy required, at the initial call-in stage of sick leave, far too much personal health information to be disclosed. All the employer should be entitled to at the early stage is the information necessary to allow the Employer to confirm the legitimacy of the absence.

SUN argued that the Wellness Policy violated the collective bargaining agreement and was unreasonable. PAPHR argued that there were no violations and the policy was a reasonable exercise of management rights.

FINDINGS:

SUN was successful and the grievance was allowed in full. Note: SUN was not awarded any costs of medical reports previously paid by members, but SUN had not pursued that at arbitration as we had no evidence of cost being incurred.

The majority of the Arbitration Board found that:

- if the employee says he/she is sick – then the presumption is he/she is sick and has access to sick leave benefits. The exception is if requested to provide certificate of illness and does not, however, the Employer must have reasonable grounds for requesting the certificate of illness.
- The Employer can only require disclosure of the least intrusive medical information needed, which is only that required to establish that the employee is in fact sick or injured. As the length of illness increases, the amount of information the Employer will be entitled to will likely increase, however continues to be as little as possible to establish the employee is unable to attend regular or modified work due to illness or injury.
- Generally no medical information would be required for a short term illness (3 days or less).
- The only condition of accessing sick leave and sick leave credits is providing notice that an employee will be absent due to illness. The Employer cannot withhold sick pay pending verification.
- Reference to a graduated return to work in article 18.12 is related to article 19.01 not sick leave.

Ultimately, the majority of the Board of Arbitration held that the Wellness Support Policies were at complete odds with the Collective Agreement.

- One call is all that is required;
- The employer has no right to code the sick leave as unverified or to withhold access to sick leave;
- Cost savings cannot be had at the expense of the collective agreement provisions.
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The policies were declared a violation of the collective agreement and found to be unreasonable. The Employer was ordered to cease administering the Policy.

Note: The majority decision pulled no punches and clearly stated that the Policy was a breach and a clear attempt to save money by denying access to sick leave.

The parties attempted to meet and reach a settlement during a first set of hearing dates. Although no settlement was reached, the information gained by the Union at that meeting was invaluable. Consideration for full and frank pre-hearing discussion and disclosure should be given.