

IN THE MATTER OF the grievance of Mary DiCaro
AND IN THE MATTER OF the arbitration of the grievance
BETWEEN:

Sheridan College of Applied Arts and Technology

- and -

Ontario Public Service Employees Union

PLACE AND DATES OF HEARING: Oakville, Ontario, May 27 and July 14, 1997

BOARD OF ARBITRATION:

Tammy Browes-Bugden
Jacqueline Campbell
Stanley Schiff, chairman

APPEARANCES FOR THE EMPLOYER:

Rosalie Spargo, human resources specialist
F. G. Hamilton Q.C., counsel

APPEARANCES FOR THE UNION:

Alick Ryder, counsel

LOCAL 244
CAAT (A)
DICARO, M.
96F881

AWARD AND REASONS ON
PRELIMINARY MATTER

By notice dated March 28th, 1996, the grievor was laid off from her position as Special Needs Counsellor in the Student Services Division effective June 26th. On the written grievance form she put in on April 29th, she says:

That I have been laid off contrary to 27.08 A and that there are employees junior to me in seniority who should have been laid off in my place. In addition, the College failed to locate and give me a vacant full-time position for which I was qualified.

The College has replaced me with someone who fails to meet the competency, skills and experience as outlined in the collective agreement, required for the delivery of the professional service in which I was employed.

The College has not responded to my request for adjusting my seniority to reflect the full value of the work that I have put in throughout my experience as an employee of Sheridan College.

The preliminary matter we must decide is the grievor's seniority date. Notice can then be given under art. 27.08 B to the other employees who may be affected by the determination of the grievance.

The College says that, as a result of the grievor's becoming a probationer under App. VIII of the collective agreement due to a series of sessional appointments, her seniority date is March 1st, 1993. While not alleging a specific earlier date, the union counters that, for the purpose of calculations under App. VIII, account should be taken of the time span of her appointments in partial-load positions from September 1991 to May 1992. The College replies that the claim to an earlier date is barred by art. 32.05 A because the time limits in arts. 32.02 and 32.03 were long exceeded, and it is also barred by the equitable doctrine of laches. We note that, until the grievance before us was put in, the grievor never formally challenged the characterization of her partial-load appointments nor the College's resulting statements of her seniority date. Anyway, the College says, art. 27.04 B is decisive: the grievor also never effectively disputed the accuracy of her seniority dates as set out in the lists posted yearly.

The grievance form sets out the grievor's "complaints" for the purposes of arts. 32.02 and 32.03. As we read what she wrote, "the circumstances giving rise to the complaint" in the first and in the second paragraph are events that occurred well within the stated time limits. The "circumstances" asserted in the first sentence of the first

paragraph are the layoff in the presence of junior employees and those in the second sentence are the layoff in the presence of the vacant position. The "circumstances" asserted in the second paragraph are her displacement by someone unqualified. As the evidence disclosed the grievor's history, the events in 1991 and 1992 are indeed relevant and important to what the first paragraph says. But they are not what the complaints are about on the paragraph's face. This factor distinguishes what is before us from the grievance form and the reasoning in *Re Fanshawe College and OPSEU (Dobos grievance)* (1991) (Swan, chairman). The complaints in the first two paragraphs are therefore not out of time. The complaint in the third paragraph is, however, different. Since it immediately raises the matter of the earlier events, it is barred for untimeliness.

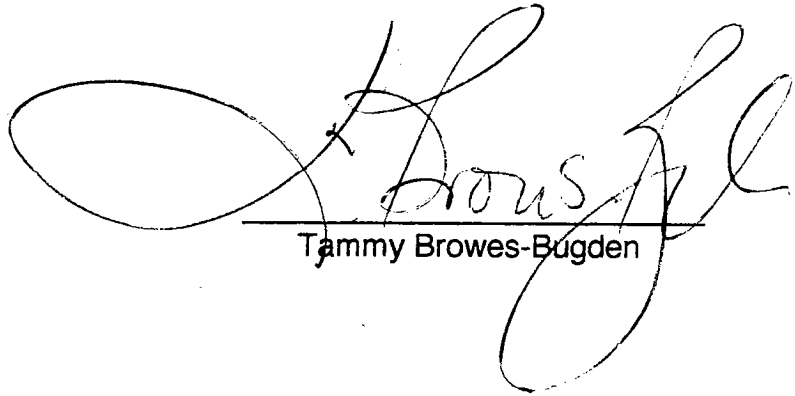
The doctrine of laches does not apply here. Since the complaints in the first two paragraphs are about the layoff and its consequences, we doubt that laches can apply to the background events of 1991 and 1992 not there mentioned. Be that as it may, applying the doctrine here would demand that the grievor's delay in challenging the seniority date on the successive yearly lists caused the College prejudice. *E.g., Re Cybermedix Health Services and OPSEU* (1992), 30 L.A.C. (4th) 436, 446 (Haefling, arbitrator). Prejudice we cannot find. While the person who would have first hand knowledge of the events is no longer an employee of the College, there was no evidence that the person was unavailable to testify at the College's behest anyway. *E.g., Re Shipping Federation of Canada and Int'l Longshoremen's Ass'n* (1967), 18 L.A.C. 174, 176 (Weatherill, chairman).

But none of that helps the grievor prove a seniority date earlier than June 1st, 1992. Article 27.04 A orders the posting of seniority lists in January of each year. Article 27.04 B then renders "the information contained therein...correct for all purposes unless the employee disputes its accuracy...by filing written notice thereof with the College." The logic of the provisions makes undisputed seniority dates on each yearly posting "correct for all purposes" until the successor is posted the next year: the undisputed dates in the successor are then "correct...". The last seniority list posted before the layoff and the grievance showed the grievor's seniority date as "01-June-92". On the evidence we see that she did not dispute the accuracy of that date by "filing written notice". That the notice be in writing is an explicit requirement of art. 27.04 B. The "purposes" for which the date is "correct" include those of layoff and bumping under art. 27.06. Whatever may be the result of untangling the threads of her work from September 1991

to May 1992, the direction of art. 27.04 B is mandatory and overrides the requirements of arts. 32.02 and 32.03. *Re Mohawk College and OPSEU (Group grievance) (1978)*, at 9-10 (Brown, chairman).

The grievor's seniority date for the purpose of this arbitration is therefore June 1st, 1992.


DATED at Toronto this 5th day of August, 1997.



Tammy Browes-Bugden



Jacqueline Campbell



Stanley Schiff, chairman