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Concerning an arbitration

Between:

ST. CLAIR COLLEGE

and

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Grievance of S. Read, dismissal

Board of Arbitration

J. W. Samuels, Chairman
R. J. O'Connor, College Nominee
J. D. McManus, Union Nominee

For the Parties

Union

R. R. Wells, Counsel
S. Read, Grievor
W. Stammner, Chief Steward
R. Price, Local President

College

R. J. Atkinson, Counsel
D. Lauzon, Manager Staff Relations

Hearing in Windsor, June 10, 1987

In early November 1986, the grievor was dismissed because she did not report for work to her position teaching English as a Second Language at the Thames Campus in Chatham. She says that there was not just cause for her dismissal and seeks reinstatement to the College's employ.

The grievor has been teaching at the College since 1973, and full-time since 1975. She lives in Windsor, and until the spring of 1982 she taught at the South Campus in that city. Then, because of financial constraints, the College had to cut back its offerings at the South Campus and this would have meant that the grievor would have to be laid off. Instead, she accepted a position at the Thames Campus in Chatham, and began commuting to work.

By the fall of 1983, the grievor was experiencing serious health problems, which prevented her from attending regularly in Chatham. We now know from numerous medical reports submitted by the parties that she suffers severe anxiety, including hypertension and headaches, states of panic and depression, and that these conditions are aggravated or brought on in particular by the driving involved in getting to Chatham.

For the spring term of 1984, the grievor was able to make arrangements with a colleague to exchange positions for one on the South Campus in Windsor. After this term, she never returned to work.

There is a long story to be told about the next two and a half years. Suffice it to say that ultimately she succeeded in her claim for disability payments for two years from Sun Life Assurance Company, who carry the long-term disability policy with the Council of Regents. This policy provides for a 6-month waiting period, then 24 months coverage for disability which results in an inability to perform any of the duties relating to one's regular work. This two-year period ran out on October 18, 1986.

In the meantime, on July 11, 1986, the grievor's principal physician, Dr. N. A. Fretz, wrote to the College to say that she could return to work. Mr. D. Lauzon, the College's Manager of Staff Relations, called Dr. Fretz to confirm this advice. Mr. Lauzon was told that the return was

"unconditional" and that it would be as of September 29, 1986. However, in mid-September, the grievor suffered from bronchitis and a severe asthma attack and was unable to return to work. The return was delayed by the College to October 9, then November 4. She never returned to work. In a meeting with Mr. Lauzon, the grievor made it clear that she would never return to the Chatham Campus. On October 8, Dr. Fretz wrote to the College to say that the grievor could return to teaching duties "in the Windsor campus" on November 1. But there is no place for her at the Windsor Campus. So she was dismissed for failing to report to work in Chatham.

It is clear that the grievor was and is not medically fit to work in Chatham. This was confirmed by letters from Dr. Fretz (dated December 31, 1986), and a Dr. R. J. Mason (dated March 3, 1987) who was consulted for a second opinion. Not only is she incapable of commuting to Chatham, but she cannot move there, because she needs the support systems available to her in Windsor.

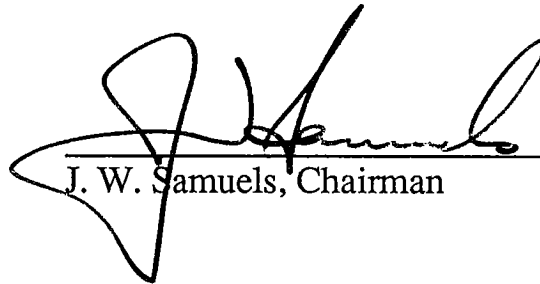
In these circumstances, the grievor cannot be discharged for disciplinary reasons. She did not "fail to report to work", which connotes some fault on her part. She was unable to report for work.

At our hearing, the College did not make a full presentation concerning the possibility of dismissal for innocent absenteeism, and nor did the Union have the opportunity to call all the evidence it might have wanted to call on the matter of prognosis. Furthermore, the dismissal letter did not cite innocent absenteeism as the reason for the dismissal. However, the result of all the evidence introduced so far is to show clearly that the grievor was blameless in failing to report to work precisely because she was totally unable to report to the Thames Campus and would never be able to do so. In short, the Union succeeded in demonstrating that there was no just cause for a disciplinary dismissal because there is a *prima facie* case for dismissal for innocent absenteeism. The College is entitled to regular attendance at the

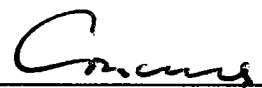
place of work by its employee, and the grievor appears unable now and for the foreseeable future to provide this basic service.

In these circumstances, which are very unusual, we conclude by declaring that the grievor was not properly dismissed in November 1986 because there was no just cause for a disciplinary dismissal, and she is to be reinstated with no compensation or any benefit from the College. But given the reasons for this finding, and all of the evidence we received to support this finding, we will retain jurisdiction to consider the ultimate disposition of the grievor's employment relationship with the College, if the College seeks to terminate the relationship because of innocent absenteeism.

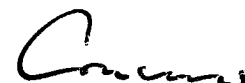
Done at London, Ontario, this 6th day of July, 1987.



J. W. Samuels, Chairman



R. J. O'Connor, College Nominee



J. D. McManus, Union Nominee