

IN THE MATTER OF AN ARBITRATION

BETWEEN:

SHERIDAN COLLEGE

(THE COLLEGE)

AND:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(THE UNION)

AND IN THE MATTER OF THE GRIEVANCE OF A. ZARIN, FILE #624401A

BOARD OF ARBITRATION:

Howard D. Brown, Chair
Jacqueline Campbell, College Nominee
Edward Seymour, Union Nominee

APPEARANCES FOR THE COLLEGE:

Brenda Bowlby, Counsel
Lynn Barrett
M. Essex

APPEARANCES FOR THE UNION:

Nelson Roland, Counsel
Azad Zarin, Grievor

A HEARING IN THIS MATTER WAS HELD AT OAKVILLE ON

FEBRUARY 8, 2007.

INTERIM AWARD

*file
(Interim award to be noted in UW)*

It is not an issue for the College that the Grievor has glaucoma rather the issue is the nature of accommodation. If temporary, the College tops up an employee's salary but not where the disability is permanent and the STD benefit does not apply. The College relies on the Grievor's medical report by his doctor stating that his disability is permanent and required accommodation. The College position is therefore that the Grievor is not then entitled to STD benefits and does not qualify for long-term disability. An independent medical disclosed that the accommodation requested for the Grievor's vision problem was not necessary. It is its position that the Grievor must prove that accommodation is required to obtain STD benefits. It is also alleged that while the Grievor was paid top up benefits prior to September 2005, and working reduced hours, he was also working on a contract in continuing education. It is the position of the College that the Grievor is not entitled to accommodation for a permanent disability where he is paid for actual hours of work. Alternatively, the Union must prove that the Grievor needed accommodation and is entitled to STD benefits.

At the hearing, the Board was not clear as to the issues between the parties on this grievance which the Board is required to determine at arbitration. It appeared that both parties have a different view of the extent of the evidence to which the Union requires to support the grievance as well as the responses of the College to be made at arbitration. The Board therefore ruled orally at the hearing that the parties were directed to define the issues to be dealt with by the Board relevant to this grievance to narrow the areas of dispute. Counsel for the parties were directed to exchange particulars of their positions on

The Grievor has been employed since 1987 with the College as a Professor and teaches architecture courses. He has glaucoma for which he had surgery on his left eye and the condition worsened since early in the last decade. There is no issue as to that visual condition for which he has been accommodated by the College with reduced workloads arising out of his visual problems. In certain periods, the Grievor has worked less than full-time hours with reduced salary but his salary was topped up through short-term disability benefits.

In September 2005, the Grievor was working on reduced hours but the top up benefit to the salary received by the Grievor was cancelled and not paid by the College. That reduction also affected the Grievor's vacation pay in that year so that a total reduction of pay which is claimed by the Grievor is about \$7,000.00 for periods set out in his grievance.

It is submitted that the Union believed that the cancellation of the top up pay resulted from a change in the policy of the College but then it was learned that it resulted from a distinction between a temporary and permanent disability of an employee which in its view, is a wider issue than set out in the grievance which involved a claim for payment in a defined period of time. The Union therefore sought particulars and full disclosure of documents by the College to clarify the position of the College as to the grievance for the Union's preparation for the next hearing.

It is not an issue for the College that the Grievor has glaucoma rather the issue is the nature of accommodation. If temporary, the College tops up an employee's salary but not where the disability is permanent and the STD benefit does not apply. The College relies on the Grievor's medical report by his doctor stating that his disability is permanent and required accommodation. The College position is therefore that the Grievor is not then entitled to STD benefits and does not qualify for long-term disability. An independent medical disclosed that the accommodation requested for the Grievor's vision problem was not necessary. It is its position that the Grievor must prove that accommodation is required to obtain STD benefits. It is also alleged that while the Grievor was paid top up benefits prior to September 2005, and working reduced hours, he was also working on a contract in continuing education. It is the position of the College that the Grievor is not entitled to accommodation for a permanent disability where he is paid for actual hours of work. Alternatively, the Union must prove that the Grievor needed accommodation and is entitled to STD benefits.

At the hearing, the Board was not clear as to the issues between the parties on this grievance which the Board is required to determine at arbitration. It appeared that both parties have a different view of the extent of the evidence to which the Union requires to support the grievance as well as the responses of the College to be made at arbitration. The Board therefore ruled orally at the hearing that the parties were directed to define the issues to be dealt with by the Board relevant to this grievance to narrow the areas of dispute. Counsel for the parties were directed to exchange particulars of their positions on

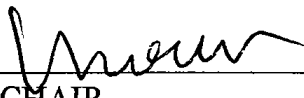
these issues and provide any necessary supporting documentation for the purposes of the next hearing. The Board will set a further date to continue the hearing by which time the parties will have a disclosure of particulars and documents, the exchange of which should be made not later than one month prior to the next hearing.

The Board is satisfied that the Union's request for information prior to the hearing is not made in order to see if a case exists but in the circumstances of the Grievor as indicated by Counsel, for the presentation of relevant material to the issues as set out by counsel prior to the hearing. The Board directs that any seemingly relevant material should be produced by the College in advance of the hearing to the Union. The relevancy to the issue of any disputed documented can be determined by the Board at the hearing.

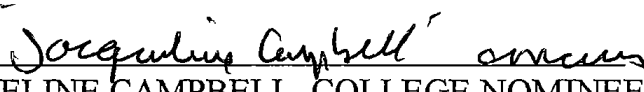
Compensatory issues can be left to be determined subsequent to the hearing on the merits of the grievance for which the Board retains jurisdiction. If it becomes clear in this disclosure process that medical evidence will be required in support of the Grievor's claim, the doctor involved should be made available for examination at the next hearing. The purpose of such pre-hearing disclosures is to allow a fair hearing where relevant material has been available for the preparation of the case to be heard at arbitration.

The Board will arrange a further date for hearing mutually acceptable by the parties.

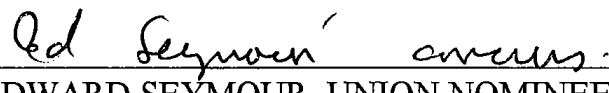
DATED AT OAKVILLE THIS 25TH DAY OF JUNE 2007



H.D. BROWN, CHAIR



JACQUELINE CAMPBELL, COLLEGE NOMINEE



EDWARD SEYMOUR, UNION NOMINEE