

Employee's Excessive Absences To Pursue Education Need Not Be Tolerated By Employer



In *Teamsters Local Union 847 v Maple Leaf Sports and Entertainment*, 2019 CanLII 95328 (ON LA), a part-time restaurant employee in Ontario, Canada with two years' seniority was discharged from her employment because her absenteeism rate was higher than the maximum permitted under the company's Absenteeism Policy.

Employer's Absenteeism Policy

The employer's Absenteeism Policy permitted employees to be absent without justification for up to 10% of their scheduled shifts without penalty. If an employee missed more than 10% of their shifts between July 1 and June 30 in any year they were deemed terminated. The calculation did not include medically supported absences or personal emergency days under the *Employment Standards Act*. If in January of any year it appeared an employee was heading toward a 10% absenteeism rate, they were warned so they could bring their absenteeism below 10% before the end of June.

Grievor's Absences and Termination

From July 2017 to June 30, 2018, the grievor's absenteeism rate was 18.46%. She stated this was because in the first half of the year she was studying for her Chartered Professional Accountant (CPA) degree while working at a full-time job. Although the grievor improved her attendance when she received a warning letter, she was unable to reduce her absences below 10%. The employer attempted to bring the grievor's absences below 10% by treating the maximum absences allowable as personal emergency days, but this did not reduce the grievor's absences below 10%. The grievor's employment was terminated for just cause due to her high absenteeism rate.

Union's Position

The union alleged that the grievor was discharged from her employment without just cause contrary to the provisions of the collective agreement. It argued that the Policy should not be applied in the circumstances because the grievor was "simply trying to 'better' herself" by studying to obtain a CPA degree.

Arbitrator's Decision

The arbitrator noted that the employer's Absenteeism Policy was accepted by the union. He characterized the Policy as reasonable and reasonably applied. The Arbitrator dismissed the grievance stating that the termination was in accordance with the Policy and "reasonable and justified in the circumstances."

Bottom Line for Employers

The decision in *Maple Leaf Sports and Entertainment* suggests that adjudicators will consider it justifiable when an employer fires an employee whose absences are more frequent than permitted under a reasonable Absenteeism Policy, even if the absences involve a respectable activity. While this case arose in the union context, all employers should consider implementing an Absenteeism Policy to address problematic issues of absenteeism in the workplace. Such a policy may be useful in defending claims arising upon termination of employment.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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