

Sick Leave Abuse: Unacceptable Even When Working From Home



Over the course of the pandemic and the years following, most organizations moved at least some of their workers to a work-from-home arrangement. In doing so, employers have placed trust in their workers to complete their tasks and be working as and when required.

In the recent decision of *ICBC v. MoveUP (Canadian Office and Professional Employees' Union Local 378) (Mundy Grievance)*, [2021] B.C.C.A.A.A. No. 57 (Peltz), Arbitrator Arne Peltz considered whether a worker who worked from home could be discharged for sick leave abuse.

Background

The Grievor worked remotely from home as approved under company policy. The Grievor and her husband went on vacation for the August long weekend after she tried and failed to book a day off for the Saturday, which was a scheduled work day for her. Instead, the Grievor called in sick on Saturday morning.

Because the sick day had previously been rejected as a vacation day, the Employer's attendance system automatically flagged the situation and management began an investigation. During an investigation meeting, the Grievor maintained that it was a last minute trip and she intended to work her Saturday shift remotely from the hotel room, but came down with a migraine and called in sick, spending the day in bed. A review of social media revealed an Instagram post of the Grievor celebrating at a lakeside resort, and records showed the Grievor and her partner had purchased a truck that afternoon.

The Employer challenged the Grievor's story in a follow-up meeting, highlighting inconsistencies in her account of event, as well as the Grievor's knowledge of the Employer's work-from-home policy which required that a new safety checklist was necessary for any change in home office location. The Employer ultimately determined that the Grievor had been dishonest in claiming sick leave, and had failed to be fully honest and forthright during the ensuing investigation. Despite the Grievor's good employment record, the Employer concluded that the trust required for a viable employment relationship had been irreparably damaged and terminated the Grievor's employment.

The Union grieved the termination, arguing that the Employer did not have just cause

for disciplining the grievor and, even if it did, that termination was excessive in the circumstances.

Decision

Arbitrator Peltz disagreed and found that there was cause for dismissal.

The central issue was why the Grievor had been unable to work her shift on Saturday. The Grievor's explanation was that she was sick. In assessing her credibility, Arbitrator Peltz found contradictions in the Grievor's testimony, her interview responses and the evidence at arbitration. For instance, the Grievor could not provide straightforward records of the hotel booking, or evidence that she and her partner had ordered room service on Saturday evening as they had claimed. In sum, the Grievor's testimony was not consistent with independent evidence provided.

Significantly, Arbitrator Peltz also found that work arrangements during the COVID-19 pandemic were a serious matter from every perspective, and a "sensible, responsible employee would know this and would confirm an alternate arrangement with her supervisor in advance".

In upholding the termination, Arbitrator Peltz confirmed that sick leave abuse is a serious form of dishonesty, and justifies termination in the absence of mitigating circumstances. In this case, there were insufficient mitigating factors to justify a finding that the employment relationship could be restored. The grievance was denied.

Takeaways

There are a couple of key takeaways for employers.

First, this case nicely illustrates the importance of a proper investigation process. The Employer had an initial meeting with the Grievor and then had a follow-up meeting to address inconsistencies. When the decision to terminate was made, the Employer had multiple grounds upon which to rely in reaching the conclusion that the Grievor had been dishonest and committed sick leave abuse.

Second, if it is important to an organization that workers in work-from-home arrangements ask permission before working in different environments (e.g. a hotel room while on vacation), the organization should prepare and communicate an unambiguous company policy outlining its expectations. This will assist an employer in relying on that policy in the event of employee discipline.

Conducting employee investigations and drafting organizational policies can be challenging, and we recommend seeking the assistance of a capable employment and labour lawyer.

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