

Arbitration Award Summary

05-515 – Rejection on Probation

Case Outline:

This grievance falls under the Collective Agreement expiring March 31, 2005.

The member worked as a community social worker. She was first hired as a casual in the community for four months prior to accepting an indeterminate position. The work environment immediately deteriorated upon her accepting the indeterminate position as personal differences were voiced from the outset.

Over the course of the ten months before the member was rejected on probation, there were a couple of incidents which called into question the member's judgment as well as a growth in the apparent dysfunction in the office. A coworker filed a complaint against the member for an incident that occurred outside of work hours, involving a local teenager. After investigation, a written reprimand was issued on June 28, 2004 to both the member and her coworker who had become unnecessarily involved. The member chose not to grieve the written reprimand however responded to the employer in September 2004 after some consideration.

In December 2004, a second incident occurred in which the member was transporting a client to a nearby community for an appointment and gave a ride to the client's aunt who had recently been charged with assault of the client. In testimony, the member indicated that she was not aware of a no-contact order against the aunt, in fact had seen them talking within the community. She asked the client who indicated it was "Ok" before offering the ride. The aunt and the client's mother also testified that the administrative assistant had both recommended that the aunt request a ride and that the mother complain to the member's supervisor. The member received a three day suspension that she chose not to grieve.

The third incident occurred in February 2005. The member was not the caseworker for the client in question, only a community contact. A question of the client's safety in her community home came up on February 3, 2005. The member contacted the client's caseworker who was located in another community and followed up with the situation as she felt was appropriate as the community contact. She did not contact her supervisor or the RCMP about the incident until later that same night. From her supervisor's point of view, this showed that she had not reacted to the situation until that point. This was not the case, only what was perceived by a lack of information. The employer suspended the member with pay pending an investigation and rejected her on probation on February 22, 2005.

Throughout the course of the member's probation, there was a decided lack of direction. A performance appraisal was started in October 2004, however never completed. There was no other written appraisal done. There were discussions with her supervisor where questions were posed but never anything official. In November 2004, the member placed a harassment

and abuse of authority complaint against her direct on site supervisor. An investigation was completed and the allegations were confirmed.

The member acknowledged that the situation in the workplace was not going to improved and applied on a position with another authority. She was offered and accepted the position and wrote a letter to the acting CEO requesting release from her probationary position so as to accept the new one. With her rejection on probation, the offer was rescinded and the member was ineligible to apply for any other positions for three years.

Employer's Argument:

There should be no doubt from evidence that appropriate training was provided to the member at the commencement of her probationary period (a course was attended in Yellowknife). The member was experienced and knew what the scope of the job and associated duties were. Supervisory support was provided from Yellowknife and there was an effort made by management to clarify and deal with interpersonal issues. Despite this effort, the work environment with her coworkers broke down to the point where it was deemed irreparable.

Management conceded that no written performance appraisal was done but asserted that the policy directives in the HR Manual, section 1610, were guidelines and should not detract from the reasonable efforts made by the Employer in the particular circumstances presented to assess the member's long term suitability. Expectations were clearly communicated to the member in discussions with management and in November 2004, the member was advised in on such meeting that there were reservations over her suitability and there was a chance for recommendation of rejection on Probation if the working situation did not improve.

Counsel for the Employer outlined management's efforts to improve the work environment. The member had been physically separated from the other community social worker, a new Yellowknife supervisor had been assigned and the onsite supervisor was removed from a supervisory capacity.

Management witnesses testified to their understanding of the incidents that finally led to the recommendation for rejection on probation. Consideration had been given to releasing the member to the new position; however, due to concern over the interpersonal problems she was encountering, they made the decision to reject on probation. Counsel asserted that the dismissal was in good faith as the evidence shows the significant steps taken by supervisory and management level personnel to deal with the member's employment difficulties.

Union's Argument:

Due to the abuse of authority and personal harassment which she received during her probationary period, the member should be taken as having been prevented a fair and reasonable opportunity to show her suitability. Therefore there was no "good faith" rejection under section 21 of the *Public Service Act*.

The member did not receive the kind of support and guidance needed to succeed in her community social worker position. The office setting was determined to be a “poisoned” work environment by the Employer yet they initially downplayed the seriousness of the other’s conduct. After the issuance of the letters of reprimand in June 2004, the member’s coworker went on leave for two months leaving the member to manage the second case load as well. There were no complaints from the community prior to the December incident, in fact the member was “well liked and appreciated”.

The member was denied a fair opportunity to meet whatever expectations the Employer had. The Employer did not follow their HR Manual assessment guidelines. Emphasis was on discipline, and ridding itself of the problem created by the member’s perseverance.

Arbitrator’s Decision:

The Arbitrator ruled that the grievance must succeed. He ruled that this was a suitable case to be awarded compensatory damages (equivalent to 6 months wages) but not reinstatement. He also ordered that the probationary rejection be removed from the member’s file with all corresponding documentation.

In his interpretation of the evidence, he found that everything presented showed a dysfunctional workplace throughout the probationary tenure. The member persevered without collaborative or collegial support from her coworkers. The member had only occasional supervision from Yellowknife and her on-site supervisor was eventually found to have abused her authority and harassed the member.

There was no formal work assessment report or formal performance appraisal though there were records of discussions and interviews between management and the member. The arbitrator found that there was inadequate probationary planning and development. He did not agree with management’s suggestion in her recommendation for rejection on probation letter that she had shown an “accumulating pattern of poor judgment”. There was no file audit indicating that she was mishandling her caseload files and the only performance assessment drafted was never signed as it was seen as skewed.

He found that the member was not given a fair chance to succeed. He was also troubled that when the incident in February 2005 arose, that the Employer seemed to jump at rejection on probation rather than approving the member’s request to be released from her probation in order to pursue a position in another authority.

“Harassment, and abuse of authority by the on-site person in a supervisory capacity, disassociation by her co-workers, little by way of planning or considering alternatives to reform the situation presented, do not make for a tenable probationary period under the collective agreement which provides me with my jurisdiction, and the Public Service Act which requires good faith.”