Ontario arbitration board upholds 'Canadian' approach to random drug testing

Readers of FOCUS might recall the lengthy legal battle over Imperial Oil's alcohol- and drug-testing policy in *Entrop v. Imperial Oil* (see "Court of Appeal overrules human rights board on legality of random breathalyzer testing" on our Publications page). While that case was instrumental in establishing alcoholism as a disability under human rights legislation, and resulted in key provisions of the company's policies being struck down, the Ontario Court of Appeal upheld the company's random breathalyzer testing, but ruled that automatic dismissal could not be imposed for employees who tested positive.

Now another similar policy implemented by Imperial Oil, this time involving mandatory, random taking of oral swabs for detecting marijuana use, has come under challenge and has been found wanting. In *Imperial Oil Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 900* (December 11, 2006), the random drug-testing policy was struck down based on well-established arbitral principles about such testing.

The issue arose in Imperial Oil's Nanticoke refinery in May of 2003. At that time, the company announced the suspension of random urinalysis drug testing and its replacement by random testing by means of saliva samples for employees in safety-sensitive positions. The company explained that it suspended its previous drug-testing program in 2001 because the Court of Appeal in *Entrop* expressed doubts about the ability of urinalysis to predict likely impairment. The company advised that it believed that saliva testing would address the Court's concerns over the questionable reliability of the urinalysis test. The union responded by grieving the policy.

By a 2-1 majority, the board of arbitration held that the program violated the collective agreement. In striking down the policy, the board made note of the following factual circumstances:

- For more than 15 years, no employees had been found to be impaired by drugs.
- There was no evidence that cannabis use was on the rise in the refinery.
- While the results of the oral swab test do predict impairment, the condition of impairment is known only several days after the test is administered, following the completion of laboratory analysis.

THE 'CANADIAN MODEL'

The board then reviewed how random drug testing in safety-sensitive workplaces has been treated in Canadian arbitral case law. The board noted that under the "Canadian

model," unlike the approach taken in the U.S., arbitrators preferred reasonable-cause testing over random, no-cause testing of employees in safety-sensitive industries. The board cited this quote from an earlier award as summing up the Canadian view:

> "The value placed on our personal privacy generally outweighs the right to test simply because some employees sometimes might be abusing alcohol or drugs and coming to work impaired. The balance tips, however, when an employer has good reason to suspect that the risk factor of impairment has been increased for an employee who occupies a safety-sensitive position."

The board then listed the basic elements of the Canadian approach to random drug and alcohol testing as developed in the jurisprudence:

- No employee can be subjected to random testing, except as part of an agreed-on program of rehabilitation.
- An employer can require an employee to submit to testing where there is reasonable cause to do so.
- Management rights include the power to require employees to submit to testing following a significant incident, accident or near-accident where it is important to identify the cause of what occurred.
- Random testing is legitimate for employees found to have drug- or alcohol-use problems, usually for a limited period of time. The union must be involved in negotiating the terms on which testing for the employee will be implemented.
- Where testing is warranted, as in the above circumstances, refusal or failure to submit to the testing can be grounds for discipline, but do not constitute automatic grounds for termination. Each case must be assessed individually.

ENTROP NOT DETERMINATIVE

The board then considered the effect of the Court of Appeal's decision in *Entrop* on the established arbitral approach. In the board's view, the Court of Appeal was dealing with the narrow application of the *Human Rights Code* to the company's drug- and alcohol-testing policy, with specific focus on whether random testing could be a *bona fide* occupational requirement, and thus a defense to a human rights complaint, in a safety-sensitive environment. The Court was not considering whether the policy might violate the collective agreement and consequently also did not consider the extensive body of arbitral jurisprudence on random testing. Further, the board held, the protections conferred under the collective agreement may be greater than those offered under the *Code*:

> "[I]t is important to remember that that which is permissible under human rights legislation may not be permissible under a collective agreement. […] It is manifestly open to a trade union and an employer to agree, within the terms of their collective agreement, to sets of rights and obligations which might be greater

> than those found in statutes of general application intended to provide minimal protections in respect of individual rights, such as employment standards legislation and human rights codes."

The board rejected the company's argument that the oral swab test at issue here was analogous to the breathalyzer test considered in *Entrop* and that the result in *Entrop* should determine the outcome of the grievance. First, the board stated, the oral swab, unlike the breathalyzer, did not give instant results, and the tested employee was sent back to work, pending the receipt of results from the lab several days later. Accordingly, oral swab testing did not meet the test applied in *Entrop* of being reasonably necessary to ensure immediate workplace safety.

More important, however, in the board's view, was the fact that subjecting all employees to random oral swab testing could not be reconciled with the established arbitral approach to such testing. That approach permitted testing of an employee when there was reasonable cause to do so, or when an accident or incident justified such a measure.

In supporting the balancing approach adopted by Canadian arbitrators, the board expressed the view that the experience of safety-sensitive industries in Canada has shown that random testing is neither necessary nor justified. Major employers such as CN, Dupont and Irving have achieved their safety goals without resorting to such testing.

Accordingly the majority of the board ruled that the random-testing program was in breach of the collective agreement and must be struck down.

In Our View

The board's majority did uphold other aspects of the employer's policy. These included the requirement that employees consent to drug testing where there is cause to conduct the test or where testing is part of a rehabilitative program for the employee being tested. As well, the provisions giving local supervisors the discretion to order post-incident testing were upheld. With respect to the provisions that made the presence of drugs or drug metabolites in the body a violation of the policy, the board stated that such employees were protected by the just cause provisions of the collective agreement: for some employees the presence of drugs in the body might not be a sign of impairment, while for others the presence of drugs might constitute a violation of a rehabilitative program that is a term of the employee's continued employment.

Imperial Oil filed for judicial review of Arbitrator Picher's decision in January 2007. The judicial review is scheduled to be heard September 25, 2007.

Terminated, with damages: Arbitrator chides hospital for breaching medical privilege of employee who failed to comply with immunization protocol

The issue of the privacy of employee health records has come up again in an Ontario arbitration (see "Access to employee health records, arbitration and the *Personal Health Information Protection Act*, 2004: an arbitrator rules" on our What's New site, May 2007). In *North Bay General Hospital v. Ontario Public Service Employees Union* (August 25, 2006), the issue was the effect of a breach of the statutory privilege under s. 63 of the *Occupational Health and Safety Act* (OHSA) barring employer access to employee health records, except under specified circumstances.

The grievance concerned the termination of a back-fill employee working as a phlebotomist, a person trained in taking blood. The events giving rise to her termination began with an outbreak of flu in the hospital. When such outbreaks occur, the protocol developed by provincial health authorities requires that employees who have not been inoculated be prohibited from entering outbreak areas. Where an employee has not been inoculated in advance of declared outbreaks, but then opts to take the flu shot in order to keep working, that employee must take the anti-viral Tamiflu for two weeks until the shot takes effect.

When an outbreak was declared at the grievor's hospital, the grievor was one of several employees who had not previously been inoculated. She agreed to be inoculated, but balked at taking Tamiflu, stating she would avoid outbreak areas in the hospital. The employer advised her that she was required to work in outbreak areas, and that she therefore must take Tamiflu for the two-week period.

The grievor agreed, and went to the Occupational Health Service (OHS) for a prescription. She was then given permission to work. At the end of the two-week period, the employer learned from the pharmacy that the grievor never picked up her prescription. During that period she took blood from six patients on seven occasions in areas of the hospital that were clearly marked as restricted.

At the arbitration of her dismissal grievance, the arbitrator held that the grievor committed a serious offence amounting to a fundamental breach of her health care responsibilities. Given her short-term temporary status, the arbitrator held that termination was the appropriate response.

BREACH OF PRIVACY RIGHTS

Having decided termination was appropriate, the arbitrator still had to address the union's assertion that the termination should be reversed based on what it said was the employer's breach of the grievor's privacy rights. The union's assertion was based on s. 63 of the OHSA which provides:

> Section 63(2) Employer access to health records
>
> No employer shall seek to gain access, except by an order of the court or other tribunal or in order to comply with another statute, to a health record concerning a worker without the worker's written consent.

The arbitrator found as a fact that the OHS had communicated directly with the employer about the grievor's immunization status at the time the outbreak was declared. This was the general practice of the OHS whenever an outbreak was declared. Despite the fact that the OHS treated immunization status as confidential, it routinely disclosed this information about employees when there was an outbreak.

The arbitrator also found that the OHS contacted the employer to advise that the grievor had not picked up her prescription at the pharmacy. Further, following this disclosure, the employer initiated an email exchange with the OHS in order to secure more information for its investigation. During this exchange, the OHS provided the employer with more information from the grievor's health file, including her initial reluctance to take Tamiflu.

With respect to the second finding, the union argued that the employer could not claim that the disclosure was justified because the grievor was a threat to patient health as the disclosure came at the end of the two-week period following the inoculation, and the grievor was therefore fully immunized. The union asserted that because the grievor was a patient of the OHS, the OHS should have sought her consent before advising the employer that she had not taken the medication.

The union stated that the breach of the OHSA was the principal issue in the grievance. Pointing to arbitration cases dealing with unjustified video surveillance, it argued that where employee privacy rights are breached in this manner, the result should be reinstatement with compensation for the grievor's losses. The union argued further that she was entitled to aggravated and punitive damages, the latter so that the employer understands that it should not breach medical privacy rights in the future.

The employer countered that s. 63(2) was not really engaged in the dispute as the employer did not actively seek access to the grievor's health record. Rather the grievor in this case could have chosen not to be able to work in outbreak areas and to decline to share her immunization information. However, by choosing to work in outbreak areas, she implicitly consented to sharing her health information with the employer for the

purpose of establishing her fitness to work in those areas. In the employer's view, if the information may be shared in order to allow the grievor to work, the employer should also have been able to access it when the OHS discovered that she did not pick up her prescription.

ARBITRATOR: TECHNICAL BREACH, ACTIONABLE BREACH

The arbitrator held that the employer breached the grievor's statutory medical privilege, and assessed the employer $750 in punitive damages as a remedy. However he declined to suppress the evidence gained by the breach or to void the grievor's termination. The arbitrator found that there were two types of breaches committed by the employer in this case.

The first occurred when the OHS first disclosed the grievor's immunization status to hospital management when the outbreak was declared. While this was a reasonable practice, it did not accord with the requirements of s. 63(2) of the OHSA. Accordingly the arbitrator held that this was a technical breach, and one which did not justify reinstatement of the grievor. Alluding to the arguments made by the employer, the arbitrator noted that the grievor knew that her immunization status was being shared with management, as this was necessary in order for her to continue working in outbreak areas:

> "OHS's actions, up to and including the calls to management to inform them that the Grievor had not picked up her prescription, were reasonable in all the circumstances; the information shared was not intrusive and none of this information sharing […] brought the practices of OHS into disrepute. [G]iven my view of the main issue in the case, which is informed by my view that the grievor had an obligation and a positive duty to inform the employer of her condition, I find that it would be entirely unreasonable to tamper with or roll back the discipline given that this alleged breach, put at its highest, is a technical one only."

However, the arbitrator took a different view of the email exchanges between management and the OHS after it was disclosed that the grievor had failed to pick up her prescription. This breach was "actionable," the arbitrator stated, because it was a repeated breach not only of the letter, but of the spirit, of the legislation. Yet because the arbitrator took the view that suppressing the evidence of this exchange would have no effect on the ultimate disposition of the grievance, he held that the appropriate remedy was a modest damages award.

The arbitrator expressed the view that the award of $750 should be characterized as "punitive" and not "aggravated", as there was no evidence that the breach had caused the grievor any mental distress. While the hospital's conduct could not be called "malicious, oppressive and high-handed" its spokespersons had not shown any remorse for the

employer's careless conduct in an area which demands a high standard of care. Accordingly something more than a mere declaration was required.

In the result, the grievor was awarded damages for the breach, but her termination was upheld.

In Our View

The OHS in this case was in a difficult position since it was both the administrator of the flu protocol, and a group of health care professionals with privileged access to health information. In order for the OHS to be successful in its role of ensuring a healthy workplace, employees must be able to speak frankly to the OHS about health issues, without fear that the information will be disclosed to the employer. In this case, the routine disclosure by the OHS when there was an outbreak should have been supplanted by a requirement that employees either consent to the disclosure, or provide written evidence of their immunization status, if they wish to be eligible to work in outbreak areas.

"Time theft" amounts to serious misconduct warranting lengthy suspension

The decision, *Zehrs Markets Inc and United Food and Commercial Workers, Local 175 & 633* (July 6, 2006), concerned the termination of a 22-year employee in the position of head clerk for taking extended and unauthorized breaks during working hours. In early 2004, Zehrs' management was alarmed at the high level of staff absenteeism and lateness, and accordingly addressed these issues on numerous occasions to the departmental managers and staff. Management was of the opinion that time theft amounted to breach of trust and was analogous to stealing products through the backdoor. Soon after, it was brought to management's attention by several of the staff that the grievor was acting in direct contravention of company policy, by taking extended and additional breaks during her shift.

EMPLOYER SURVEILLANCE

In response, management monitored the grievor's actions over several months through personal observations and video surveillance during her working hours. Accordingly, it was discovered on several occasions, the grievor would depart and return at will without informing staff or management, and as well failed to punch-in or was late punching-in when arriving at work.

As a result of management's surveillance, a meeting was arranged with the grievor and a union representative in May 2005. The grievor was asked several questions regarding the evidence put before her which included the company's findings of her additional and extended breaks, as well as her missing and amended time card entries. Following the meeting, the grievor was given a "Notice of Reprimand" form and was suspended indefinitely. She was subsequently terminated in June 2005.

'AS LONG AS JOB IS DONE' IS NOT A DEFENCE TO WARRANT AN EXTENDED BREAK

During the hearing, the grievor did not deny the contents of the surveillance evidence, but noted that she was led to believe that taking extended breaks was permitted on the condition that the department was properly looked after. However, the grievor could not provide any evidence to substantiate this understanding. Moreover, it was argued that there existed no clear evidence that anyone had directly warned the grievor that she was in violation of company policy. Though, admittingly, the grievor was well aware she was taking advantage of her position.

The arbitrator found that there was no refuting that the grievor had committed time theft. The arbitrator did not accept the union's argument that the discipline imposed should be rendered void due to the significant delay in reprimanding the grievor. Moreover, the union's position that the grievor lacked the necessary dishonest intent for the finding of time theft was ultimately undermined by her admission on cross-examination.

GRIEVANCE UPHELD

On the issue of termination, the arbitrator found the penalty excessive. He relied on a number of mitigating factors examined by arbitrators in the context of dishonesty cases:

- *bona fide* confusion or mistake by the grievor as to whether she was entitled to act in the way she had;
- the grievor had been incapable, due to drunkenness or emotional problems, to appreciate the wrongfulness of her acts;
- her actions had been impulsive or non-premeditated;
- the harm done had been relatively trivial in nature;
- the grievor had made a frank acknowledgement of her misconduct;
- there was a sympathetic, personal motive for dishonesty, such as family need rather than hardened criminality;
- the past record of the grievor;
- there were future prospects for likely good behaviour; and
- the economic impact of discharge in view of the grievor's age, personal circumstances, etc. would be too severe.

MITIGATION

As to mitigating factors, the arbitrator found that the trivial nature of the harm done to the employer (approximately $75.00) was evidenced far more significantly by the employer's delay in taking any action to curb the grievor's time theft for a period of approximately four to five months. The employer's argument that it took time theft just as seriously as product theft was totally undermined by this lengthy delay. The grievor's 22-years of service with Zehrs and her unblemished disciplinary record was also important. In concluding that a lengthy suspension (approximately 13 months) was warranted, the arbitrator took into consideration the fact that the grievor failed to frankly admit her wrongdoing and take responsibility for her actions until near the end of the arbitration hearing.

The arbitrator also commented:

> "… I have concluded that a very significant penalty is appropriate given the serious nature of the dishonesty offence committed by the Grievor, the need to ensure that the Grievor gets a clear and unequivocal message that this type of misconduct will not be tolerated in the future, the need to recognize the seriousness of dishonesty offences for employers in the retail food industry, and the need to discourge similar behaviour by other employees in the future."

In Our View

This decision is consistent with the principles established by the Supreme Court of Canada in *McKinley v BC Tel* (2001). Employee dishonesty is not, in and of itself, cause for dismissal. Rather, in determining whether termination is justified, one has to assess the context of the dishonest conduct to determine whether the employee's dishonesty gives rise to a breakdown in the employment relationship. The more serious the dishonest conduct, the more substantial the mitigating factors have to be to warrant the substitution of a lesser penalty than dismissal.

Quebec arbitrator: Prior homicide conviction unconnected with teaching job under Quebec *Charter*

On August 8th, 2007, the Superior Court of Quebec dismissed the Commission Scolaire de Montréal's application for judicial review of an Arbitrator's award ordering the reinstatement of a convicted murderer to his position as a teacher in an electronic program for adults.

Commission scolaire de Montréal v. *Choquette, et al.* involved a grievor who, in an altercation, violently beat his spouse to death. He had been convicted of manslaughter and sentenced to seven years in prison. In 1998, he applied for a position as a teacher for an electronic program for adults. The application form required that the candidate provide personal information concerning previous violent criminal offences. The grievor answered in the negative.

Based on the information provided, the employer hired the grievor in December 1998. It was only in February 2004 that the employer was made aware of his previous conviction. He was terminated immediately. The union grieved his dismissal.

GRIEVANCE ALLOWED

The arbitrator held for the grievor and ordered his reinstatement. In making his decision, the arbitrator considered the provision in the collective agreement stating that "All false and intentional statements made to fraudulently obtain employment is a cause for annulment of the contract by the School board" together with section 18.2 of the Quebec *Charter of Rights and Freedoms* which provides that "no one may dismiss, refuse to hire or otherwise penalize a person in his employment owing to the mere fact that he was convicted of a penal or criminal offence, if the offence was in no way connected with the employment (...)."

The arbitrator found that the burden of proof rested on the employer and that he had to demonstrate that by failing to provide information about his conviction, the grievor had intentionally made a false statement to fraudulently obtain employment. He found that the employer had not presented evidence of the fraudulent intention. He then analyzed section 18.2 of the Quebec *Charter* and concluded that, while all intentional and false statements could constitute a cause for voiding the contract, they did not automatically lead to that result; rather, the essential element of the false declaration (i.e. his criminal record) had to be directly connected to the job being sought.

The arbitrator found that the crime committed should not be the focal point of his analysis but rather the connection between the crime and the grievor's ability to accomplish his work effectively in spite of his criminal conviction.

Furthermore, the arbitrator stated that every psychiatrist called by both the School Board and the union had testified that the grievor's violent assault on his wife had been caused by a psychotic blackout. The union had also argued that this constituted a handicap which the employer had a duty to accommodate. The arbitrator agreed with the union and found that the evidence had established that there was very little risk that the grievor would reoffend and that therefore the employer would suffer no undue hardship by maintaining the grievor's employment.

Accordingly, the arbitrator ordered the School Board to reinstate the grievor and to compensate him for lost wages. The employer applied to have the arbitration award judicially reviewed.

APPLICATION FOR JUDICIAL REVIEW DISMISSED

The Superior Court of Quebec concluded that the Arbitrator had a duty to determine if the School Board's decision to terminate the grievor's employment contract or to annul it due to the false declaration, was equivalent to "dismissing, refusing to hire or otherwise penalizing" the grievor because he had been found guilty of involuntary manslaughter, thereby contravening section 18.2 of the Quebec *Charter*.

The Court concluded that while it might have arrived at a different decision, the arbitrator's approach and conclusions appeared to be consistent with the jurisprudence. The School Board's application for judicial review was therefore dismissed.

In Our View

Presumably, the arbitrator and court were influenced by the psychiatric evidence at the grievor's criminal trial and by the passage of over five years between the grievor's hire date and the discovery by the employer of his prior conviction. It should be noted that under the Ontario *Human Rights Code*, it is not discriminatory to refuse employment to a person in the circumstances at issue in this decision. Under the Ontario legislation, the prohibition against discrimination in employment for record of offences applies only where the employee has been convicted of a provincial offence, or where the offence is one in respect of which the employee has received a pardon.

The School Board has filed an application for leave to appeal before the Court of Appeal of Québec. This matter is scheduled to be heard on September 26, 2007.

Adjudicator: presence at work a *bona fide* occupational qualification for employee who can only work from home

In this era of advanced technology, the idea of "telework" has become quite popular for people who want to shorten commuting time, spend more time with family or for those who are unable to leave the confines of their homes to attend work. However, a recent decision by an adjudicator with the Public Service Labour Relations Board demonstrates that it is not always a suitable option in the search for measures to accommodate disability.

The decision, *Canada (Treasury Board – Statistics Canada) v. Lafrance* (March 23, 2007) concerned a 25-year employee of Statistics Canada in the position of Senior Project Officer. She suffered from a severe form of sleep apnea, which disrupted several aspects of her life. Due to this disorder, she had taken four long leaves of absence over a 15-year period. In 2001, a Health Canada physician recommended that she return to work through a "telework" arrangement, and confirmed this recommendation in December of 2003. Following these recommendations, the grievor began working mainly from home and reporting to the office twice a week.

In January of 2004, the grievor stopped receiving work she could complete at home. She was informed by her supervisor that there were no assignments that could be completed outside of the office. As well, her supervisor also expressed concern over the recent quality of work. Despite the lack of work available to the grievor, her employer continued her salary, but it did require that she be reassessed by a physician. The physician reported that she was unable to attend work, but was able to complete work from home.

In May of 2004, the grievor filed a complaint with the Canadian Human Rights Commission, alleging that her employer discriminated against her due to her illness by failing to allow her to "telework". As a result of mediation, a settlement was reached later that year, which, among other things, stated that the grievor would return to work pending a report for her physician. The physician declared that the grievor was fit to return to work as of December 14, 2004, but recommended that the work be completed at home and that she not return to the office.

NO HELP IN ARRANGING ACCOMMODATION

The employer then contacted the physician to request a list of functional limitations to assist in the accommodation of work. The physician replied to this inquiry reinforcing the recommendation that full-time "telework" be arranged. The employer made two further attempts to elicit detailed information from the physician on the grievor's

functional limitations. Eventually, the employer contacted the Canadian Human Rights Commission to request assistance in obtaining a response from the physician. As the responses from the physician lacked sufficient detail, the employer had been unable to develop an accommodation plan for the grievor. At that point, the employer stopped paying her and considered her to be on leave without pay.

Despite the lack of assistance from the physician in identifying the grievor's limitations, the employer considered other opportunities outside of the grievor's division. It also further broke down her work description into smaller segments and was able to identify three projects that could be completed outside of the office setting. That work was sent to the grievor and she resumed receiving her salary.

NO FULL-TIME TELEWORK AVAILABLE

After completion of this work, the employer informed the grievor that there was no further work that could be completed by "telework." She requested to be considered for translation work and was granted a temporary assignment. However, the assignment ended early as she failed to meet official language standards at the level that was required.

The majority of the work available, the employer argued, had to be accessed within the office as there are strict security requirements in place to protect the privacy of the information stored by Statistics Canada, as well as to protect the integrity of the organization. As well, the grievor's work was very team-oriented: as a Senior Project Officer, attendance at the workplace for team meetings was essential to the proper functioning of the team. The employer stated that it was not averse to a "telework" arrangement, as earlier demonstrated, but only in so far as the work was conducive to being performed at home.

The employer also stated that a full-time "telework" arrangement was not a viable option in this case: the employer could not to find an available position that would allow for such an arrangement, and the nature of the grievor's position required her to be present at the employer's premises for at least part of the time. The employer acknowledged that it would be possible use videoconferencing and teleconferencing as alternative options, but that there was not much of that equipment available and the little that they did have was in great demand.

As the grievor was insisting that she do only full-time "telework," it was becoming more difficult for the employer to find suitable work for which she was qualified. In the result, she filed a grievance alleging that the employer had failed to grant her the accommodation that she required, in violation of the collective agreement.

GRIEVANCE DISMISSED

The adjudicator found that the grievor was capable of working full-time but only from a telework arrangement, as indicated by her physician. However, he confirmed that by virtue of her senior position, she was obliged to be present in the workplace, and that her presence in the workplace was a *bona fide* occupational requirement. He also indicated that, given the specific statutory context of the grievor's work, making the arrangements necessary to allow the grievor to work at home would constitute undue hardship:

> "The *Statistics Act* guarantees citizens that the information they entrust with Statistics Canada will be kept confidential and so imposes on the organization extremely stringent constraints with respect to the management of that information. […]The evidence showed that the security measures that would be needed to connect the grievor's home to network "A," on which the data essential to her work are located, are clearly prohibitive. In this context, the implementation of a system that would allow the grievor to work at home would constitute undue hardship. A videoconferencing system would not be sufficient."

Despite the grievor's claims, the employer was and had been conducting an ongoing search for a satisfactory full-time position for the grievor. The adjudicator concluded that the employer had not failed in its duty to accommodate the grievor, as it had actively and continuously searched for an agreeable arrangement. The adjudicator denied the grievance but stated that the employer's search for an equivalent position and/or work must continue to further ensure that the grievor is accommodated.