

Garda Security Screening Inc. v. IAM, District 140 (Shoker Grievance), [2020] O.L.A.A. No. 162

Ontario Labour Arbitration Awards

Ontario

Labour Arbitration

Panel: M. Brian Keller (Arbitrator)

Heard: June 25, 2020 by videoconference.

Award: July 2, 2020.

[2020] O.L.A.A. No. 162

IN THE MATTER OF an Arbitration Between Garda Security Screening Inc. (employer), and IAM, (union), and IN THE MATTER OF Various Grievances Namjot Shoker- # 13907

(17 paras.)

Appearances

Stephan Prabhu, Harrison Le, for the employer.

Keith Aiken, Tayeb Lharti, for the union.

AWARD

1 The grievor's employment was terminated on April 23, 2020. The facts leading to the termination are not complicated. The grievor, annually, signed an attestation confirming that she was aware of the employer's Code of Ethics. The attestation indicates that she confirms having read and understood the Code of Ethics, agrees to abide by them and acknowledges that a breach of the Code could result in discipline.

2 On March 27, 2020, in response to the pandemic, the employer communicated the guidelines of the Public Agency Health of Canada to all employees. Part of those guidelines, under "Isolation", requires employees to isolate if the employee is waiting for the results of a lab test for COVID- 19. In other words, the employee is not to report for work if they have gone for a test and are waiting for the results of that test. It is acknowledged by the parties that employees were made fully aware of that requirement. The grievor denied she was aware of that requirement.

3 On April 12, 2020, the employer was informed by the grievor that she had tested positive for Covid -19. The employer then undertook to identify other employees and parties who had been in close proximity to the grievor. The grievor was placed on a leave of absence and returned to work on April 23, 2020. The grievor was asked to write a statement with respect to her actions. The grievor wrote that she was tested on April 6, 2020, that she did not work on April 6, 7, or 8, while waiting for her results, and that she was informed that she was positive on April 12, 2020. She wrote that no one told her, and she was not aware, that she was required to self-isolate.

4 Following further investigation, the employer determined that, contrary to the assertions of the grievor, she did work on April 6. The employer met with the grievor on April 23, and the grievor told the employer during the investigation, and me during the hearing, that she did not inform the employer that she had gone for the test, and she attended work because she didn't feel sick. During that meeting, the employer showed the grievor a bulletin entitled "Know the Difference: Self -- Monitoring, Self -- Isolation, and Isolation for Covid -- 19 guidelines". The grievor acknowledged that she had seen the bulletin, which are the guidelines stated earlier in these reasons, which require isolation while waiting for results of the test for Covid- 19.

5 The employer argues that the grievor was aware of the requirement to isolate after being tested for Covid- 19, that her failure to do so was a breach of the employer and public health guidelines, that she was aware of the guidelines and in spite of that disregarded of them. The employer submits that the actions of the grievor put at risk the health of her coworkers, others working at the airport with whom she was in proximity, as well as the travelling public.

6 The grievor, for her part, submits that she did not feel sick on April 6, the day she went for her test, and that is why she chose to work.

7 I am satisfied that the employer took the necessary precautions to ensure that all employees, including the grievor, were, and are, are aware of its guidelines and those of Public Health. I am further satisfied that the grievor was aware of those guidelines.

8 After reviewing the guidelines as published by the employer, I find no ambiguity with respect to what employees are required to do following a Covid -- 19 test: They are to isolate until they get the results.

9 In her evidence, the grievor states that she returned to work because she did not feel sick. This is contradicted by both her written statement and logic. In her written statement she wrote that she went to her family doctor because she had a headache which she attributed to a sinus issue. She wrote that her doctor prescribed a medication and that she started to feel better. However, she then writes that she subsequently called her family doctor again. I think it's fair to say that the only reason she would have called her family doctor the second time is because either she was still not feeling well or she was not feeling well again. If she was feeling well, there would have been no need for her to call her family doctor the second time.

10 She writes, as well, that her doctor advised her to go for the Covid test because "I am working at the airport". Even if she had not read or been made aware of the guidelines, certainly her doctor indicating that she was being sent for the test because she was working at the airport should have indicated to her the risk to others if she went to work if infected. Caution and good sense, if nothing else, should have dictated that she not return to work until she knew her medical status.

11 I believe it is fair to say that what was happening with respect to Covid- 19 and the pandemic had been, by April 6, the number one item in the news and the number one item being talked about generally from at least the beginning of March. It is hard to believe that anyone was not aware of the expectations from public health in Ontario and Canada about what to do after having been tested. But, even if the grievor had not been so generally aware, she and her coworkers had been specifically made aware of what to do by the guidelines issued by the employer which were brought to the attention of all employees.

12 In the number of days prior to April 6, 2020, the number of cases in Ontario was surging. This was reported on television, on the radio and in the print media. The week of April 6 was one of highest weeks of new cases in Ontario. In fact, the third highest number of new cases in Ontario was on April 6.

13 Given how notorious the situation was, and given the wall-to-wall reporting of the situation, I cannot conclude that the grievor was unaware of the consequences of spreading the virus if she was infected. Her doctor, out of an

abundance of caution, if nothing else, sent her for a test because she worked at the airport. Needless to say, that was a very important consideration. The grievor put at risk, by returning to work, her colleagues. She also put at risk other persons working at the airport with whom she came into contact. She also put at risk the general public flying from Pearson and, in turn, persons with whom those passengers would have had contact at their destination.

14 By way of illustration, one needs only look at the most recent situation in Kingston. A small number of employees at a beauty salon tested positive for the virus. They, in turn, infected a larger number of clients. Using contact tracing, it was eventually determined that approximately 700 people needed to be quarantined for fear that they could have contracted the virus and for fear that they, in turn, could have spread the virus to countless others.

15 The actions of the grievor were a clear violation of the employer's and public health guidelines. Her claim of not feeling sick is absolutely irrelevant. She was required to isolate, as she knew, for the safety and health of others. She chose not to, thereby putting countless others at risk of illness or death.

16 The grievor, at the hearing, showed no remorse for what she did, or concern about the potential consequences of her having returned to work. This is, to say the least, troubling and gives me no confidence that she understands the potential consequences of her action.

17 For all the above reasons, the grievance is dismissed.

Ottawa this second day of July, 2020

M. Brian Keller, arbitrator