



APPENDIX C

ARBITRATION: THE CASE OF EMMA WILLIAMS

// INSTRUCTIONS

Your instructor will assign the case to groups or individuals. Once it has been assigned, you will take on the role of management or union (as per your instructor's direction). You will then write an argument appropriate for your assigned role. You may also be required to present your arguments in class on a date designated by your instructor. A key part of this assignment will be the application of arbitral principles of "just cause" for discipline and discharge. This assignment is based on (1) independent research of arbitration jurisprudence; (2) lecture material; (3) the assigned text; and (4) the attached case.

To understand the principles involved in the case, it will be necessary to review relevant arbitral jurisprudence. The texts *Canadian Labour Arbitration* by Brown and Beatty and *Collective Agreement Arbitration in Canada* by Palmer and Palmer offer excellent summaries. Both are probably available at your library. It will also be helpful to review cases reported in the series Labour Arbitration Cases (LACs), which should also be available at the library.

The completed assignment should require a *maximum* of seven typewritten, double-spaced pages (excluding references and cover sheet). To do well on this assignment, you will need to

1. demonstrate a sound knowledge of the elements of just cause;
2. clearly present arguments appropriate for your assigned role of management or union;
3. cite relevant jurisprudence (LACs) to support your argument;
4. present your ideas in a clear manner (correct grammar, punctuation, style, etc.); and
5. ensure that your reasoning is *concise and logically consistent*.

// THE CASE OF EMMA WILLIAMS (VERSION 1)¹

THE FACTS

The facts of the case are not in dispute. Emma Williams was a registered nurse employed in the oncology (cancer) unit of University General Hospital. Williams is now 46 years old and was hired by University General on March 1, 1996. The hospital has a three-point performance rating system: (1) does not meet expectations; (2) meets expectations; and (3) exceeds expectations. Over the years Williams's performance ratings were "meets expectations" for most years and "exceeds expectations" for her last three years.

In her role as a cancer nurse, Williams was responsible for monitoring patient care, administering potentially lethal drugs (e.g., narcotics), monitoring patient regimes, and counselling patients and their families concerning care options. Accordingly, nurses on this unit were required to maintain certification as “cancer specialists.” Williams received this certification in 1995 and had maintained it ever since. Williams was verbally counselled and received two written warnings for absenteeism on January 27, 2013, July 23, 2013, and October 15, 2013, respectively. A union representative was present for all warnings. She was terminated on December 3, 2013, following a three-day leave of absence without permission. The letter of discharge states that she was terminated for failing to call in sick as well as for excessive absenteeism (19 percent as against a hospital average of 7 percent). A union representative was present during each of the meetings where warnings were presented to Williams. Also, on October 15, 2013, Ms. Chang (her manager) reminded Williams about the hospital’s confidential Employee Assistance Program (EAP). Chang advised Williams that she could call the EAP about anything, including drug and alcohol addiction or the recent death of her son, that might be affecting her attendance.

Before her discharge, Williams sought treatment for a drug (a painkiller known as oxycodone) and alcohol addiction. She has been in and out of counselling since March 2014. Between the initial treatment in March 2014 and the time of the arbitration hearing (February 25, 2015), she had three major relapses in which she stopped attending her counselling sessions (dates April 20, 2014, July 21, 2014, and October 25, 2014). She has been drug- and alcohol-free since November 11, 2014. At the time of dismissal, management was unaware that she was being treated for her addiction.

Williams’s addiction counsellor, Dr. Anderson, believes that she has an 80 percent chance of remaining chemical-free over the next few years. In Dr. Anderson’s opinion, it was the unexpected death of Williams’s 16-year-old son, who in December 2012 died in the ER of the hospital where she worked, that caused the subsequent addiction. Specifically, Williams lost control of her car when it hit black ice. An accident followed where she was injured and her son subsequently died. Williams was prescribed oxycodone as a painkiller for her accident-related injuries. There is no evidence that Williams ever stole oxycodone from the hospital; however, that medication is readily available on the cancer unit where she works. Now that her patient has recovered from this tragic event shock, Dr. Anderson believes that Williams can maintain an acceptable attendance and performance record as a cancer nurse in the future.

Regarding other employees, Ms. Chang states that only one other cancer nurse, out of a staff of 30, had an absenteeism rate greater than 10 percent (15 percent). That nurse was never given a warning of any kind.

KEY DATES

March 1, 1996: Williams hired
January 27, 2013: Verbal counselling
July 23, 2013: Written warning
October 15, 2013: Second written warning
December 3, 2013: Termination
March 2014: Williams first seeks treatment
February 25, 2015: Arbitration

RELEVANT COLLECTIVE AGREEMENT CLAUSE

ARTICLE 15—CORRECTIVE ACTION AND DISCIPLINE

- 15.1. Employees can be disciplined only for just cause. Such discipline must be reasonable and commensurate with the seriousness of the violation.
- 15.2. Both the union and the hospital believe in the concept of progressive discipline. Accordingly, they agree that a verbal counselling should normally take place prior to any disciplinary action. Should an employee's conduct or performance not improve after this counselling, the normal progression of discipline will be as follows:
 - Step 1: Written warning
 - Step 2: Second written warning
 - Step 3: Suspension without pay
 - Step 4: Termination
- 15.3. Notwithstanding clause 15.2, it is understood that certain offences are sufficiently serious to warrant immediate discharge and/or a faster progression through the process outlined in 15.2.
- 15.4. Employees have the right to have a union representative present during any of the steps outlined in clause 15.2.

// THE CASE OF EMMA WILLIAMS (VERSION 2)²

THE FACTS

The facts of the case are not in dispute. Emma Williams was a registered nurse employed in the cancer unit of University General Hospital. Williams is now 46 years old and was hired by University General Hospital on March 1, 1996. Her performance was commendable. The hospital has a three-point performance rating system: (1) does not meet expectations; (2) meets expectations; and (3) exceeds expectations. Each year between (and including) 1996 and 2012, Williams received the highest rating of “exceeds expectations.”

In her role as a cancer nurse, Williams was responsible for monitoring patient care, administering potentially lethal drugs (e.g., narcotics), monitoring patient regimes, and counselling patients and their families concerning cancer care options. Accordingly, nurses on this unit were required to maintain certification as “cancer specialists.” Williams received this certification prior to being hired and had maintained it ever since.

Williams was verbally counselled and received two written warnings for absenteeism on January 27, 2013, July 23, 2013, and October 15, 2013, respectively. She was terminated on December 3, 2013, following a three-day leave of absence without permission. The letter of discharge states that she was terminated for failing to call in sick as well as for excessive absenteeism (19 percent as against a hospital average of 7 percent). A union representative was present during each of the meetings where warnings were presented to Williams. At no point during these meetings was Williams reminded of the hospital's confidential Employee Assistance Program (EAP).

Subsequent to the discharge, Williams sought treatment for a drug and alcohol addiction. She has been in and out of counselling since March 2014. Between the initial treatment in March 2014 and the time of the arbitration hearing (February 25, 2015), she had

two major relapses in which she stopped attending her counselling sessions (dates April 20, 2014, and October 25, 2014). She has been drug- and alcohol-free since November 11, 2014.

Williams's addiction counsellor, Dr. Anderson, believes that she has a 65 percent chance of remaining chemical-free over the next few years. In Dr. Anderson's opinion, it was the unexpected death of Williams's 16-year-old son, who in December 2012 died in the ER of the hospital where she worked, that caused the subsequent addiction. Specifically, Williams lost control of her car when it hit black ice. An accident followed where she was injured and her son subsequently died. Williams was prescribed oxycodone as a painkiller for her accident-related injuries. There is no evidence that Williams ever stole oxycodone from the hospital; however, that medication is readily available on the cancer unit where she works. Now that her patient has recovered from this tragic event shock, Dr. Anderson believes that Williams can maintain an acceptable attendance and performance record as a cancer nurse in the future.

Regarding other employees, Ms. Chang (her manager) states that only one other cancer nurse, out of a staff of 30, had an absenteeism rate greater than 10 percent (13 percent). That nurse was given a written warning. Since this warning, her attendance has been improved. Hence, further discipline was not necessary in that case.

KEY DATES

March 1, 1996: Williams hired
January 27, 2013: Verbal counselling
July 23, 2013: Written warning
October 15, 2013: Second written warning
December 3, 2013: Termination
March 2014: Williams first seeks treatment
February 25, 2015: Arbitration

RELEVANT COLLECTIVE AGREEMENT CLAUSE

ARTICLE 15—CORRECTIVE ACTION AND DISCIPLINE

- 15.1 Employees can be disciplined only for just cause. Such discipline must be reasonable and commensurate with the seriousness of the violation.
- 15.2 Both the union and the hospital believe in the concept of progressive discipline. Accordingly, they agree that a verbal counselling should normally take place prior to any disciplinary action. Should an employee's conduct or performance not improve after this counselling, the normal progression of discipline will be as follows:
 - Step 1: Written warning
 - Step 2: Second written warning
 - Step 3: Suspension without pay
 - Step 4: Termination
- 15.3 Notwithstanding clause 15.2, it is understood that certain offences are sufficiently serious to warrant immediate discharge and/or a faster progression through the process outlined in 15.2.

- 15.4 Employees have the right to have a union representative present during any of the steps outlined in clause 15.2.

// THE CASE OF EMMA WILLIAMS (VERSION 3)³

THE FACTS

The facts of the case are not in dispute. Emma Williams was a registered nurse employed in the cancer unit of University General Hospital. Williams is now 46 years old and was hired by University General Hospital on March 1, 1996. The hospital has a three-point performance rating system: (1) does not meet expectations; (2) meets expectations; and (3) exceeds expectations. Each year between (and including) 1996 and 2012, Williams received a performance rating of “meets expectations.”

In her role as cancer nurse, Williams was responsible for monitoring patient care, administering potentially lethal drugs (e.g., narcotics), monitoring patient regimes, and counselling patients and their families concerning cancer care options. Accordingly, nurses on this unit were required to maintain certification as “cancer specialists.” Williams received this certification in 1995 and had maintained it ever since.

Williams was verbally counselled and received two written warnings for absenteeism on January 27, 2013, July 23, 2013, and October 15, 2013, respectively. She was terminated on December 3, 2013, following a three-day leave of absence without permission. A union representative was present for the last warning; Williams declined union representation for the first two warnings. At no point was Williams reminded about the Employee Assistance Program (EAP) in place at the hospital. On November 26, 2013, management found oxycodone in her locker. Only Williams had the combination needed to open that locker. The amount of oxycodone found was the exact amount that Williams had signed as being “contaminated and destroyed” on November 24, 2013. The letter of discharge states that she was terminated for failing to call in sick, excessive absenteeism (14 percent as against a hospital average of 7 percent), and theft of medication from the hospital.

Subsequent to the discharge, Williams sought treatment for a drug and alcohol addiction. She has been in and out of counselling since March 2014. Between the initial treatment of March 2014 and the time of the arbitration hearing (February 25, 2015), she had four major relapses in which she stopped attending her counselling sessions (dates April 20, 2014, May 30, 2014, July 2, 2014, and October 25, 2014). She has been drug- and alcohol-free since November 11, 2014.

Williams’s addiction counsellor, Dr. Anderson, believes that she has a 75 percent chance of remaining chemical-free over the next few years. In Dr. Anderson’s opinion, it was the unexpected death of Williams’s 16-year-old son, who in December 2012 died in the ER of the hospital where she worked, that caused the subsequent addiction. Specifically, Williams lost control of her car when it hit black ice. An accident followed where she was injured and her son subsequently died. Williams was prescribed oxycodone as a pain killer for her accident-related injuries. Now that her patient has recovered from this tragic event shock, Dr. Anderson believes that Williams can maintain an acceptable attendance and performance record as a cancer nurse in the future.

In terms of other employees, Ms. Chang (her manager) states that only one other cancer nurse, out of a staff of 30, had an absenteeism rate greater than 10 percent (14 percent). That nurse was given a written warning. Since that warning, her attendance has been meets expectations. Hence, further discipline was not necessary for that nurse.

KEY DATES

March 1, 1996: Williams hired
January 27, 2013: Verbal counselling
July 23, 2013: Written warning
October 15, 2013: Second written warning
November 26, 2013: Oxycodone found in Williams's locker
December 3, 2013: Termination
March 2014: Williams first seeks treatment
February 25, 2015: Arbitration

RELEVANT COLLECTIVE AGREEMENT CLAUSE

ARTICLE 15—CORRECTIVE ACTION AND DISCIPLINE

- 15.1 Employees can be disciplined only for just cause. Such discipline must be reasonable and commensurate with the seriousness of the violation.
- 15.2 Both the union and the hospital believe in the concept of progressive discipline. Accordingly, they agree that a verbal counselling should take place prior to any disciplinary action. Should an employee's conduct or performance not improve after this counselling, the normal progression of discipline will be as follows:
 - Step 1: Written warning
 - Step 2: Second written warning
 - Step 3: Suspension without pay
 - Step 4: Termination
- 15.3 Notwithstanding clause 15.2, it is understood that certain offences are sufficiently serious to warrant immediate discharge and/or a faster progression through the process outlined in 15.2.
- 15.4 Employees have the right to have a union representative present during any of the steps outlined in clause 15.2.

// ENDNOTES

1. This case is pure fiction and is not an actual arbitration. It was created for educational purposes by the second author.
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