A QUILTER WITH STRINGS ATTACHED: SIX YEARS OF SICK LEAVE ABUSE RESULTS IN DISMISSAL

By Barbara A. Korenkiewicz and David S. Louie

The B.C. Labour Relations Board has upheld the decision of Arbitrator Judi Korbin in respect of the dismissal of an employee found to have engaged in deliberate and persistent sick leave abuse over a period of six years. In her award, the Arbitrator confirmed that no matter how much one would rather be quilting, the “absence of satisfaction or pleasure in one’s paid work is not a medical condition that substantiates a claim for sick leave”: Re Nanaimo School District No. 68, [2015] B.C.L.R.B.D. No. 26 (leave for reconsideration of BCLRB No. B13/2015 denied).

Background

Sick leave requests

The grievor, an elementary school teacher, initially applied for and was granted a partial paid sick leave for the 2006 school year based on a note from her doctor which stated, “[T]he above needs to have every Friday off in order to maintain her work because of health problems.” Each subsequent year thereafter, the employee reapplied for and was granted a partial paid sick leave based on doctors’ notes which said she was unable to teach full-time and required a four-day work week. This pattern continued for six years.

Medical condition

Upon receiving the employee’s request for the 2012 school year, the employer requested additional medical information to substantiate the sick leave request and provided a form for the employee to take to her doctor. The physician described the employee’s condition as a chronic sleep disorder with cumulative fatigue which worsened as the week went by to the point that the employee was unable to work on Fridays.

Investigation and termination

The employer had some doubts about the legitimacy of the employee’s sick leave claim and decided to investigate. In so doing, the employer conducted an Internet search and
discovered that the employee was an avid quilter with her own website on which she advertised being available to conduct six-hour quilting workshops on Fridays, Saturdays and Sundays. In addition, the employer also discovered the employee’s travel blog in which she described a recent road trip to Mexico. The employer was particularly concerned about the fact that the employee had taken Friday, June 29, 2012 as her usual paid sick leave day when her blog entry from June 28, 2012 stated, in part:

“[My husband] was a little late arriving at the school … just before I was about to leave I went down the hallway of the school to wish everyone a wonderful holiday … I was literally skipping steps as I went back down the hall towards the office … We walked on the big ferry ride over to Vancouver. I mean literally we actually tried to walk off our excited energy doing loops around the big ferry …”

This prompted a formal investigation. The information set out above was put to the employee for an explanation. She denied any wrongdoing and described her quilting activities as a hobby which helped her to relax as opposed to being a business. She explained that unlike her job teaching elementary school students, teaching quilting to adults was joyful and enjoyable. In respect of the travel blog, the employee explained that her husband edited the blog which was subject to “creative licence” and therefore not to be viewed as an accurate record of events.

The employer dismissed the employee for just cause on the grounds that she deliberately and persistently abused her sick leave benefit by failing to report relevant information and by manufacturing or embellishing subjective symptoms which formed the basis for her medical certificates and paid sick leave. This misconduct was aggravated by the fact that the employee was evasive during the investigation and failed to admit to any wrongdoing.

Decision

Arbitrator Korbin upheld the dismissal and found that the grievor intended to mislead her employer. In explaining her decision, the Arbitrator emphasized the following:

- The grievor’s claim that she could only quilt for one hour on Fridays was not credible in light of her website offering six-hour quilting workshops.

- The medical evidence showed that the grievor changed her self-reported symptoms throughout the year and generally only reported sleep problems around the time she sought a medical note to support her application for partial sick leave each year.

- The grievor failed to inform her physicians of her quilting business or that she offered six-hour quilting workshops on Fridays. One doctor testified that she would not have issued a medical certificate had she known this information.

- The evidence established that when faced with spending time on work she disliked, the grievor reported low energy. When engaging in activities she found enjoyable, however, she displayed energy and enthusiasm.
• Absence of satisfaction or pleasure in one’s paid work is not a medical condition which substantiates a claim for paid sick leave.

• The grievor’s persistent denials, evasiveness and lack of forthrightness exacerbated what was already serious misconduct.

Despite the grievor’s clean discipline record and 23 years of service, Arbitrator Korbin found that termination was not an excessive penalty in the circumstances of the case and dismissed the Union’s grievance.

Takeaways

For employers, this decision demonstrates the importance of diligently managing sick leaves, and it is appropriate to ask for more information when something just does not seem right. Generally speaking, employers are entitled to clear, current and credible medical information so that they can assess the legitimacy of a leave, administer benefits and consider accommodation. As well, in the course of an investigation into suspected employee misconduct, employers can in appropriate circumstances have resort to information which an employee posts on the Internet on his or her own time.

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