



# Arbitrator Upholds University's Decision to Terminate Financial Officer with Lengthy History of Performance Issues and Workplace Conflict

June 6, 2022

On May 17, 2022, Arbitrator Kathleen O'Neil released her decision in *The Ontario Secondary Schools Teachers' Federation, Local 35 and The University of Ottawa*. The matter, which involved three separate grievances concerning the grievor's discipline and discharge, saw Emond Harnden's very own André Champagne successfully represent the University of Ottawa (the "Employer" or the "University") in a hearing spanning 17 days over the course of three years.

## Background

Between 2010 and 2017, the grievor held a position as a Financial Officer-Research in the Faculty of Engineering, where her main duties included ensuring compliance with the applicable policies and terms of research grants and contracts. The grievor was well-qualified for her position, having previously obtained a degree in accounting and a diploma in administration, and having more than 10 years of prior experience in other financial management roles at the University.

Arbitrator O'Neil's decision provides a detailed review of what amounts to a significant volume of evidence regarding documented problems with the grievor's work performance from 2011 onwards. These can briefly be summarized as follows:

- Showing a lack of flexibility where context allowed,
- Utilizing a level of verification that was more detailed than required,
- Returning documents with very small discrepancies when her supervisor was of the view that policy did not require her to do so,
- Having difficulty responding to urgent requests, including showing a lack of judgment about priorities in her work,
- Demonstrating a lack of autonomy in the sense of requiring direct supervision to get certain tasks done on time,
- Needing to improve her team work such that her supervisor would not need to be called upon as frequently to resolve conflict with other employees,
- Having a sense of proportion that was not aligned with that of her supervisor and her colleagues in terms of the volume of such things as notetaking, emails, details in all kinds of communication, who needed to be involved in resolving an issue, and what was important enough to continue to raise or to make a formal complaint about, and



- Often acting in ways which appeared not to take into account how her actions would be received by others, including by imposing her own high standards on others accompanied by a lack of nuance and difficulty finding common ground to resolve issues.

Of particular note, and central to the workplace conflict which led up to the grievor's discharge, was the fact that the grievor believed that a colleague, who held a bargaining unit position at the same level as the grievor as the Administrative Officer in the school of Electrical Engineering and Information Technology, was signing documents in an unacceptable manner – an issue referred to by the parties as the “double role/double signatures” issue. Basically, in order for the grievor to approve a financial document, she required evidence that the faculty member who was responsible for the relevant research project had authorized the expenditure, and that it had been approved by a member of the finance staff such as her colleague. In other words, she required separate academic and financial approvals. When a faculty member was unable to be physically present to sign the authorization, it had become a well established practice that they would designate someone to sign on their behalf, either through the use of a form designated for that purpose or simply by email. The grievor took issue with the fact that her colleague would use two different versions of her signature on the same document when signing on her own behalf and on behalf of a faculty member who had authorized the academic approval.

When the grievor initially raised the “double role/double signatures” issue, her supervisor met with both her and her colleague and it was agreed that the practice should be discontinued. Instead, the Administrative Officer was advised to attach the email in which the faculty member had given the necessary approval and, in the space intended for the faculty member's signature, put the words “see attached email” rather than a second signature. Despite this, the grievor continued to question her colleague's work methods, repeatedly bringing up the same issues and refusing to accept her supervisor's solutions. Still unsatisfied with how her supervisor was handling the matter, the grievor ultimately filed a complaint of financial fraud against her colleague on November 11, 2015.

Shortly thereafter, on November 13, 2015, the grievor's supervisor issued a letter of direction to the grievor in an attempt to clarify the Employer's expectations of her. The main points covered in the letter of direction were treating her supervisor with respect and following her directives, including in particular those concerning the “double role/double signatures” issue. The grievor was directed to be solution-oriented and collaborative with her colleagues, as well as to stop copying her supervisor and others when not essential, to cease documenting people's comments word-for-word in meetings, and to cease inserting extracts of her job description in emails to colleagues. She was further instructed to better manage her workload and to use available resources more efficiently.

In a report released in April of 2016, the external investigator retained to investigate the grievor's fraud complaint found no evidence of fraud, but did note that the Administrative Officer's practice of signing for two parties [herself and a faculty member] was weak and could be misunderstood as it had been by the grievor. Subsequently, in June of 2016, the Administrative Officer filed a complaint of



harassment against the grievor. Unlike the grievor's fraud complaint, this harassment complaint was substantiated. Specifically, the investigation into the harassment complaint and resulting report, which was only released on July 31, 2017, concluded that the grievor's behaviour in respect of her colleague had become vexatious and was in breach of the University's policy on harassment.

On April 7, 2016, the grievor received a three-day suspension for non-respect of the directives contained in the November 13, 2015 letter of direction. On June 16, 2016, the grievor received a further five-day suspension for non-respect of the directives contained in the November 13, 2015 letter of direction. Finally, on August 24, 2017, the grievor was discharged from her position with the University. The discharge specifically cited the grievor's disciplinary record - including her continued improper behaviour at work - as well as the outcome of the harassment complaint.

### **Positions of the Parties**

Arbitrator O'Neil was tasked with adjudicating a grievance contesting the grievor's discharge, as well as two grievances relating to the earlier suspensions of three and five days. Of note, the grievor had also previously been given a seven-day suspension on June 9, 2017 but it was not grieved and was therefore only before the arbitrator as part of the grievor's disciplinary record.

In the Employer's view, the grievor had been discharged as a result of its belief that the employment relationship had been irreparably damaged, mainly as a result of the grievor's refusal to take direction from her supervisor or to maintain satisfactory working relationships with her colleagues. Furthermore, the Employer was of the view that the grievor had systematically victimized the Administrative Officer.

For its part, the Union maintained that the grievor simply took her job responsibilities extremely seriously, and that this was mistaken by the Employer for harassment, incorrigibility and ill will. The Union contended that the Employer had not substantiated the claims of insubordination for which the suspensions were imposed, and that the grievor did make changes in response to corrective actions such that just cause had not been established for discipline or discharge. The Union accordingly requested reinstatement with compensation.

### **Decision**

On the issue of both the three day and five-day suspensions, Arbitrator O'Neil found that, on the evidence, there was cause for discipline based on the grievor's insubordination in each case, and found no basis on which to interfere with the respective levels of suspension chosen by the Employer.

On the issue of the grievor's discharge, Arbitrator O'Neil began by examining whether there was any cause for discipline among the allegations on which the discharge was based and, if that were determined to in fact be the case, would subsequently proceed with a review of the grievor's whole disciplinary record to determine if discharge was a proportionate response or whether a lesser penalty



should be substituted.

In her decision, Arbitrator O'Neil accepted the Employer's conclusion that the grievor's behaviour towards the Administrative Officer had become vexatious. She found that the supervisor's directions were clear enough for an employee at the grievor's level, and that the grievor had to have been aware long before June of 2016 that her conduct towards her colleague was unwelcome. She was persuaded, based on the evidence, that the effect of the constant questioning by the grievor of her colleague's practices was intended to demean her work and to embarrass her in front of others. As a result, she agreed that the grievor's behaviour fell squarely within the definition of harassment contained in the University's policy. Accordingly, Arbitrator O'Neil held that even considering only the grievor's conduct towards her colleague prior to the filing of the fraud complaint, the Employer had established cause to discipline the grievor after the delivery of the harassment report.

In respect of the fraud complaint, Arbitrator O'Neil held that the grievor did not honestly think that the Administrative Officer was guilty of financial fraud and that her complaint was therefore not made in good faith. Consequently, she concluded that the fact of the grievor's filing the complaint was not exempt from being properly considered as part of a pattern of vexatious conduct by the grievor towards her colleague.

Nonetheless, having found that the grievor's pattern of conduct prior to the fraud complaint and thereafter was sufficient to establish a culminating incident worthy of discipline, Arbitrator O'Neil proceeded with consideration of the grievor's entire employment record. After examining the traditional factors associated with determining whether the penalty of discharge should be reduced, she found that the Employer had established that the climate of confidence necessary to a continuing employment relationship with the grievor was no longer available. Accordingly, given the totality of the history of the matter, as well as the level of tension in the workplace on a daily basis, she determined that there was little or no chance that the situation could be rectified.

Arbitrator O'Neil noted that indeed people often have different interpretations of ethics and policy. However, in an employment setting, it is the employer who has the right to decide what interpretation will prevail within the bounds of the law. It is therefore open to an employer to end an employment relationship when an employee continues to raise issues on which an employer has given direction and that it considers to be settled.

In conclusion, Arbitrator O'Neil found that discharge was, in this particular case, a proportionate response to the grievor's conduct, and that the Employer's onus of proving just cause on a balance of probabilities had been met. Consequently, she dismissed all three grievances.

## **In Our View**

It is interesting to note that in Arbitrator O'Neil's decision, particular emphasis was placed on the fact that the grievor – particularly by her behaviour during the arbitration hearing – convinced the



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arbitrator that she did not see anything wrong with her actions and that she would not change her behaviour if reinstated. The grievor's decision to act in such a way, even after her discharge, undoubtedly further supported the arbitrator's finding that the employment relationship in question had been irreparably damaged.

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