



UNION INFO—August 2013

Atlantic region wins major sick leave grievance

UCCO-SACC-CSN's Atlantic region has won a major grievance case filed after management imposed a requirement on a Springhill Institution correctional officer to provide a medical certificate each time he requested sick leave. The decision in the adjudication, represented by Atlantic region union advisor Jack Haller, prevents the employer from placing members on the Attendance Awareness Monitoring Program (AAMP), simply because he or she may have a negative sick leave balance.

The officer, who had a negative sick leave balance of 163 hours due to a major leg injury in 2008 and two months of subsequent recovery time, was placed on the AAMP, which had been recently implemented in the Atlantic region. The officer was told that his negative sick leave balance was the only reason he had been placed in the AAMP.

According to testimony, the Springhill warden had directed supervisors to require medical certificates for all employees with negative sick balances of more than 100 hours, regardless of the circumstances, if they continue to take sick leaves.

The grievor testified that he had not abused the sick leave program, and that being compelled to seek a medical certificate each time he suffered from the flu or a migraine contravened clause 31.03 of the collective agreement. He argued that this clause concerns a pattern of predictable and consistent behaviour in sick leave usage, something his record does not support. Simply having a negative sick leave balance due to a major injury does not constitute "predictable and consistent behaviour."

The employer argued that simply having a negative sick leave balance qualifies as a concern under the clause, and that management has the power to interpret the clause in an effort to control absenteeism.

However, Public Service Labour Relations Board adjudicator Stephan Bertrand ruled that, even if well intentioned, the AAMP couldn't infringe on the collective agreement. Clause 31.03 requires a pattern be demonstrated with respect to "cumulative amounts, unusual duration, apparent excessive frequency, and any unusual correlation between the usage and the employee's behaviour over time" in order to require a medical certificate. An employer witness admitted that management did not even consult the grievor's file before imposing the requirement for medical certificates.

Neither did Mr. Bertrand agree with the employer's argument that the onus is on the employee to offer an explanation of his use of sick leave credits, noting that an employee's file is easily verifiable by the employer. In addition, there was no specific sick leave request being challenged as dubious by the employer for which it may have had a legitimate need for a medical certificate.

"I am of the view that a requirement to medically certify all sick leave absences once an employee has reached a certain threshold, in this case a negative sick leave balance, is contrary to the collective agreement," wrote the adjudicator.