

Irene Holden Ltd.
Arbitration · Mediation · Investigation · Conflict Resolution

October 10, 2012

File 1351

Roper Greyell LLP
800 - 666 Burrard Street
Vancouver, BC V6C 3P3

McGrady & Company
1105 - 808 Nelson Street
Vancouver BC V6Z 2H2

Attention: Graeme McFarlane

Attention: James Baugh

Dear Sirs:

**Re: Natrel /Division of Agropur Cooperative (Island Farms) -and- Teamsters, Local 464
(Greig McAlister - Termination without just cause; Failure to provide written notice
in a timely manner - LRB Section 104 - Case No. 63625/12R)**

Thank you for your attendance at today's hearing (via conference call) regarding the Employer's request for an adjournment of the Section 104 hearing scheduled for Wednesday through Friday of next week. Given the fact that the hearing was scheduled to begin one week from today, this decision will be provided with limited reference to counsel's submissions and the authorities which were cited. The necessity for a quick decision did not preclude me from thoroughly considering both the arguments put forward and the referenced authorities.

The Employer's request dated October 5, 2012 was threefold:

1. an application for an adjournment of next week's hearing;
2. a request for production of any relevant records from the grievor's medical care providers; and
3. finally the production at hearing of the grievor's medical practitioner regarding the medications provided to the grievor.

The letter further raised the possibility of an additional ground for the grievor's termination on May 14, 2012 - i.e. that he was impaired to perform his position as a driver.

The Employer argued that the primary issue was raised by the Union when it stated in its September 28, 2012 letter which provided the particulars of its case that "At the material times, Mr. McAlister was in pain and on medication as a result of a workplace injury. This affected his ability to concentrate and to recall." In support of this statement, the Union provided two standard drug profiles for the medications the grievor was allegedly taking at the time. Union counsel in today's submissions stated that it had no intention of calling the grievor's medical practitioner, nor would it be relying on the drug profiles which are required by law to list all of the possible side effects. Union counsel further stated that it would be relying on the testimony of the grievor as to how he was feeling during the meetings when the Employer was questioning him regarding the incidents which led to his termination. The Employer will have the ability to cross examine the grievor on that basis should the Union decide to pursue that assertion.

Having heard the submissions, I see no utility in an order which would call for the production of medical records or an order compelling one of the witnesses to be the grievor's medical practitioner. Both the requests for production of records and a specific witness are denied.

With no so called "expert" witnesses and/or opinions being sought, and the request for additional medical information having been denied, the adjournment of the hearing is not warranted. The application for same is therefore denied.

The hearing next week will concern itself with the reasons for the termination as of May 14, 2012. The *William Scott* test and other relevant standards will apply. The grounds for termination will not be expanded.

Thank you for your cooperation today. I look forward to the arbitration next week.

Yours truly,

IRENE HOLDEN LTD.

A handwritten signature in black ink, appearing to read 'Irene Holden', written over a horizontal line.

Irene Holden, Arbitrator

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