IN THE MATTER OF AN ARBITRATION

Between:

North York General Hospital

and

ONA

(Grievance of AS #2023-65)

Before:	William Kaplan Sole Arbitrator
Appearances	
For the Hospital:	Scott Williams Hicks Morley Barristers & Solicitors
For the Association:	Sandy Nicholson Senior Legal Advisor ONA

The matters in dispute proceeded to a hearing held by Zoom on October 3, 2024.

Introduction

The background facts are straightforward and not disputed. The grievor is a regular part-time nurse (and so is not entitled to sick pay but instead receives a percentage in lieu). On July 18, 2023, she tested positive for COVID-19 (RAT). On July 19, the grievor reported her illness – using the COVID-19 Questionnaire – on the on-line portal. After doing so, a pop-up screen indicated that she was "NOT CLEARED to return to work at this time." The portal further stated:

Clearance to return to work requires significant symptom improvement including:

- No fever for more than 24 hours without the use of fever-reducing medication
- No diarrhea/vomiting for at least 48 hours without taking any anti-diarrheal mediation
- Significant improvement of other symptoms not mentioned above (no development of new symptoms, feeling well enough to work)

Shortly after reporting her illness, the grievor was contacted by a nurse from Occupational Health (OH). The grievor further described her symptoms.

The OH nurse indicated in her notes: "Anticipated time to remain off work is a minimum of 5 days." The OH nurse further charted that the grievor was to remain in contact with OH and with her unit/department manager until cleared to return to work. The grievor did not recall being advised by the OH nurse to keep in contact with OH but contacted her unit daily (Clinical Coordinator). The OH nurse told the grievor that once she was symptom-free she should complete the on-line clearance form, which she did, and she then returned to work (following a summer shutdown of no consequence to these proceedings). The grievor requested quarantine/isolation pay. Her request was denied. On August 25, 2023, a grievance was filed: The employer failed "to provide me with salary continuance during my quarantine/isolation from July 20 to July 21." The matter proceeded to a hearing on October 3, 2024. Only the grievor testified.

The Collective Agreement

Article 6.05(f) states:

Effective July 20, 2023, employees who are absent from work due to a communicable disease and required to quarantine or isolate due to:

i) The employer's policy, and/or

ii) Operation of law and/or

iii) Direction of public health officials,

shall be entitled to salary continuation for the duration of the quarantine.

Association Submissions

In the Association's submission, the grievor was entitled to quarantine/isolation pay. This was a new collective agreement provision and must be given its plain and ordinary meaning. That meant paying the grievor the agreed-upon compensation. The facts made this conclusion manifest.

The grievor was absent because of a communicable disease. Having tested positive for COVID-19, the Hospital told the grievor to stay away from work. Moreover, the grievor was required to self-isolate, according to Toronto Public Health documents introduced into evidence, which categorically instructed someone who had "tested positive for COVID-19 in the last 10 days and have symptoms" to "Stay home & self-isolate." Accordingly, the grievor met two of the alternative thresholds to establish entitlement: she was required to stay home because of the Hospital's policy – memorialized in the pop-up direction and confirmed in the discussion with the OH nurse – and by direction from Toronto public health officials. The Association agreed that in July 2023, there was no Toronto Public Health order to quarantine/isolate. There was,

however, direction requiring the grievor to do so. That is what "Stay home & isolate meant." The Association asked that the grievor be pay-protected for her lost wages.

Hospital Submissions

In the Hospital's submission, to establish an entitlement to quarantine/isolation pay, an employee must be absent from work because of a communicable disease and required to quarantine/isolate by the employer's policy, or by operation of law, or by direction of public health officials. In July 2023, there was no Toronto Public Health order requiring people with COVID-19 to quarantine/isolate. The Hospital did not dispute that the grievor had a communicable disease but took issue with the suggestion that she had been required to quarantine/isolate by it or anyone, or by operation of law. Yes, the grievor was told by the Hospital to stay at home until she was symptom free, but no, no one at the Hospital ever required her to quarantine/isolate. This was in marked contrast to employees – not the greivor – who worked at the Seniors Health Center (SHC) where the pop-up screen indicated that they "MUST self-isolate for a minimum o[f] 5 days." The Hospital asked that the grievance be dismissed.

Decision

Having carefully considered the submissions of the parties, it is my view that the grievance must be dismissed.

This is a new collective agreement provision, awarded in the most recent round (*Participating Hospitals & ONA*, July 20, 2023). The words in the provision must be given their plain and ordinary meaning. The provision must also be read as a whole and purposively, and when it is the

conclusion is clear: it was awarded to pay-protect nurses required by Hospital policy, by operation of law, or by the direction of a public health authority, to stay home and quarantine/isolate in a health emergency: to protect them, to protect their colleagues, and to protect their patients. The provision establishes entitlement to quarantine/isolation pay in any one of these three different circumstances.

In this case, the grievor was not required by the Hospital's policy to quarantine/isolate. The grievor was instructed to stay at home until her symptoms abated, which she did. Instructing a sick person to stay at home until they get better is not tantamount to requiring them to quarantine/isolate. Employees with COVID-19 who worked at SHS were, on the other hand, required to self-isolate. The word "MUST" in the pop-up direction is categorical.

If the grievor had worked at the SHC, then it is quite clear that that there was an applicable Hospital policy requiring employees to self-isolate, thereby meeting one of the applicable preconditions for entitlement to quarantine/isolation pay. Employees following this policy would, it appears, have been entitled to the benefit of the provision. But that is not this case. The parties are free to argue about this in the future.

There was also no legal requirement – operation of law – requiring the grievor to stay at home and quarantine/isolate. Likewise, the grievor was not required by Toronto Public Health to quarantine/isolate. Guidance – and it uses the words "follow guidance provided" – found in a questionnaire on an informational/educational website is not a direction; it is not a requirement. Public Health directions are consequential. They are enforceable. Admonitions on websites are

neither. There is also no evidence whatsoever that the Hospital, in instructing the grievor to stay home until she was better, was attempting to do an end run around its new collective agreement obligations.

The parties made submissions about the limits of an employer's authority to require employees to quarantine/isolate. None of those submissions need be addressed in the determination of this matter other than to note that this Central Agreement provision itself contemplates circumstances where a hospital policy may require a nurse to quarantine/isolate, albeit not this case. Obviously, the Association may, if it wishes, contest the reasonableness of such a policy or rule, although the reasons why it would decide to do so are not immediately apparent since the provision, which it sought in collective bargaining, is intended to fully pay-protect nurses. Hospital counsel made numerous submissions about the potential and hypothetical interplay of Article 6.05(f) and other provisions in the collective agreement. None of those scenarios address the specific facts and circumstances of this case, and accordingly, they are not canvassed in this award nor commented upon.

Conclusion

Accordingly, and for the foregoing reasons, the grievance is dismissed.

DATED at Toronto this 10th day of October 2024.

"William Kaplan"

William Kaplan, Sole Arbitrator