



## MESSAGE FROM THE PRESIDENT:

**S**tewards are the backbone of any union, and in the BCGEU we are continuing to work at providing more information and services so you can do your job.

A key part of the information sharing has been the development of Steward information on our web site. A popular feature has been the “Arbs of Interest,” where the summaries of major arbitrations show you how the union argued on behalf of its members on a number of often complicated cases.

A printed version of the Steward is also helpful and I am hoping you find this issue of interest.

Please feel free to pass on your thoughts. Just send an e-mail to: [steward@bcgeu.ca](mailto:steward@bcgeu.ca).

A reminder: if we don't have your e-mail or latest contact details please go to the union's web site ([www.bcgeu.ca](http://www.bcgeu.ca)) and click on the “Change of Address” link in the box on the right side of the page. That will take you to an online form where you can update your contact details, including your e-mail address.

Thank you for the very important work you do on behalf of our members.

Darryl Walker, BCGEU President

## STEWARD UPDATES:

# Addictions in the workplace

BY DARREN MCLEOD, LAW CO-OP STUDENT

**A**ddictions to drugs and alcohol are, unfortunately, a reality in the lives of many of our union members. When these addictions lead to problems at the worksite, they may result in discipline or perhaps even termination. Here is a brief summary of some of the laws surrounding this issue:

### 1. The employer has a duty to accommodate

Alcohol and drug addictions are recognized as disabilities. As with any other disability, before an employer can dismiss an addicted employee for misconduct or other reasons related to the disability, it must prove that they have accommodated the employee to the point of undue hardship. This usually means that the employee must be given time to confront his or her illness and have an opportunity to seek treatment.

### 2. An employee has a duty to facilitate the employer's treatment plan

Just as the employer has a duty to accommodate the addiction, the Supreme Court of Canada has found that an employee has a corresponding duty to facilitate the accommodation process, and does not have the right to a perfect solution.<sup>1</sup> Basically, this means that the employee must take steps to confront and treat their illness using the options discussed with the employer and union. It also means that if the employer arranges for treatment, unless there

<sup>1</sup>. *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, [1992] S.C.J. No. 75



# steward updates

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is a good reason as to why that particular treatment facility is inappropriate, the employee should go to and complete the treatment.

If the employee refuses to cooperate after the employer has made sufficient efforts to find a reasonable and appropriate treatment plan, then it is likely that an arbitrator will find that the employer has met his obligation to accommodate to the point of undue hardship. Therefore, if the employee is terminated due to addiction-related misconduct after failing to follow through on the employer's treatment plan, the termination is likely to be upheld.

### **3. Rehabilitation after discharge is not necessarily enough to be reinstated**

If a person is terminated, evidence that the employee has rehabilitated themselves and is fit to work may not be sufficient for an arbitrator to order reinstatement. The Supreme Court of Canada has stated that evidence that comes after the employee is terminated – called “post-discharge evidence” – should only be relied on “if it helps shed light on the reasonableness and appropriateness of the dismissal ... at the time that it was implemented.”<sup>2</sup> Therefore, evidence of rehabilitation that occurs after the dismissal will usually only be accepted in cases where the employer did not treat the employee's addiction as an illness and failed to offer reasonable assistance. In this narrow set of circumstances, arbitrators have looked at rehabilitation as proof that the discipline was premature, and subsequently ordered reinstatement.

However, where the employer has recognized the addiction as an illness and taken appropriate steps to accommodate and assist the employee in rehabilitation before reasonably terminating them, evidence that the employee was able to attain sobriety after the dismissal will not be sufficient for reinstatement. For these reasons, it is important that

the employee make every possible effort to facilitate the employer's accommodations right away, rather than waiting to be dismissed before getting serious about rehabilitation.

### **4. Some misconduct may not require accommodation**

A recent decision of the BC Court of Appeal upheld the termination of an alcoholic liquor store employee who stole a significant amount of alcohol from his worksite over the course of a year. The Court held that as long as the employer would have terminated a non-addicted employee for the same conduct (in this case theft), then the duty to accommodate the disability does not arise. Basically, the worker's alcohol dependency had no role in the employer's decision to terminate him, so human rights issues did not arise.

Though this decision remains controversial, it is a leading case in this province.

### **5. Other tips for Stewards**

This may be obvious, but it bears mentioning – ensure that the members you work with are aware of the programs available to them to deal with their addictions, such as their Employee and Family Assistance Program (EFAP) and that taking part in these programs will be confidential and not be a detriment to them or their career. Employees need to understand that addiction is a treatable illness, and that making use of the programs available through the employer is not a punishment or something to be avoided, but something that can help them keep their job and greatly improve their life overall.

<sup>2</sup>. *Cie Minière Québec Cartier v. Québec*, [1995] 2 S.C.R. 1095



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## SETTLING GRIEVANCES

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### Deviation and alternatives to the grievance process

BY KATE CAMPBELL

**A**s most Stewards are aware, the BCGEU grievance form includes a statement that says that under BCGEU collective agreements, the employer has agreed to refrain from negotiating with an aggrieved employee, either directly or indirectly, without the consent of the union. Most BCGEU agreements also oblige the BCGEU to abandon any grievance which the aggrieved employee(s) attempt to pursue through channels outside the negotiated grievance procedure.

#### Why did the union agree to this?

This statement reflects a historic bargain that unions have made with employers. The employer, including managers and supervisors at the worksite, cannot harass a member for filing a grievance. They give up the right to bring up a grieved issue at work, send emails or call members at home about grievances. The employer can only discuss the grievance in the presence of a union representative. They cannot pressure or intimidate members into withdrawing grievances, because they are not allowed to bring it up with them directly. This provides significant protection from employer retaliation and coercion, and upholds the union's position as the exclusive bargaining agent.

The trade off for this negotiated protection is that once a grievance is filed, the member or members who filed it (including individuals who sign onto an "et al" grievance) cannot take steps outside the grievance process in relation to the matters raised by the grievance. This is referred to as "deviation from the grievance process", and in almost every collective agreement in British Columbia, the result of deviation from the grievance process is that the grievance will be deemed to have been abandoned. This means it cannot be pursued any further.

#### What constitutes deviation?

Generally, any action which is either an appeal for intervention or a request for a remedy for the

grievance will be found to be deviation. Arbitrators have determined that all of the following actions constituted deviation:

- Contacting politicians, including MLAs and MPs;
- Contacting government ministry officials, including Deputy and Assistant Deputy Ministers;
- Contacting senior management, human resources or labour relations staff of the employer;
- Writing to outside agencies or associations;
- Picketing; or
- Making statements to the press.

These actions will also be deemed a deviation from the grievance procedure if they are done by someone acting on the grievor's behalf, such as a lawyer, friend or family member.

The one exception to the rule against deviation is that union members have a right to file grievances and complaints to the BC Human Rights Tribunal simultaneously. However, there can ultimately only be one hearing on the same set of circumstances, so at some point a decision must be made between grievance arbitration and a Human Rights Tribunal hearing.



# steward updates

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## Why can't I sue my employer?

In particularly contentious situations, such as dismissals, union members sometimes consider taking legal action against their employer. There are two problems with this. First, if there is an existing grievance, filing a legal claim will almost certainly constitute deviation from the grievance procedure, and the grievance will be deemed abandoned. Second, lawsuits against an employer by union members will not be heard by the courts.

In a 1995 case called *Weber v. Ontario Hydro*, the Supreme Court of Canada considered a case where a union member filed a lawsuit for damages after his employer hired a private detective to follow him and investigate an alleged abuse of sick leave. The Court considered the case, and determined that arbitrators have the right to apply the same remedies as a judge, and have exclusive jurisdiction over all matters related to employment and labour relations. They get this power from the applicable provincial and federal labour legislation.

Therefore, if a matter arises from the interpretation, application, administration or violation of a

collective agreement, the dispute can only proceed by arbitration and the courts have no jurisdiction to hear the case. There can be no parallel, overlapping or subsequent litigation in the courts. (*Weber v. Ontario Hydro*, Supreme Court of Canada, June 29, 1995.)

The trade-off for this limitation is that the employer cannot sue union members. For example, in 2003, an Ontario union Steward and activist named Kim McQuillan gave a public speech stating that for her employer, a “powerhouse of profit”; money was no object in their campaign to get rid of the union. In addition to suspending Ms. McQuillan, the employer filed a defamation lawsuit against her. This lawsuit was dismissed by the court because even though she made the speech outside of work, they found that all aspects of her relationship with the employer were covered by the collective agreement and the *Ontario Labour Code*, and consistent with the Supreme Court of Canada’s decision in *Weber v. Ontario Hydro*, proceedings under labour statutes can only be heard by arbitrators and the Labour Relations Board. (*DiCenzo v. McQuillan*, Ontario Court of Appeal, June 13, 2008.)

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## Sleeping at work

BY DARREN MCLEOD, LAW CO-OP STUDENT

**A**rbitrators across Canada have held that sleeping during work hours is just cause for discipline. The amount of discipline justified could be anything from a short suspension to a termination. The penalty depends on the circumstances of both the actual incident itself and the accused employee’s truthfulness afterwards.

### Nodding off vs. “nesting”

Arbitrators have found there to be a range of sleeping offences, from inadvertently nodding off in a regular work position to intentionally seeking out a hidden spot to rest while undetected. Obviously, the latter is seen as far more serious than the former, and is often enough to warrant termination.

### Circumstances at the workplace

Important to the employer and arbitrator’s decision is the consequence of the employee’s nap. Safety hazards created by the employee’s slumber are significant factors in the arbitrator’s decision. As an example, an office worker who sleeps rather than working on a report poses considerably lower



# steward updates

risk than a corrections officer who falls asleep while supervising a dangerous offender in public. Arbitrators will also look to the increased burden put on colleagues, as an employee's nap is unfair to other workers who have to cover for them.

## Honesty after incident is important

As with any misconduct, lying only digs a member into a much deeper hole, and could justify firmer discipline. Arbitrators have little sympathy for those who do not take responsibility and express remorse for their actions. As an extreme example, a recent Ontario case involved two registered

nurses who frequently slept on the job and falsified their reports to show that they had checked up on patients. They also hid themselves so that patients could not find them. There were witnesses who saw them sleep, and video evidence to confirm that they did not perform the checks. Nevertheless, the nurses denied sleeping. Their dishonesty in forging reports and denying the sleep were a large part of why their termination was upheld by the arbitrator. In many cases, a person denying that they were sleeping when there is evidence to the contrary seriously harms the case for reinstatement.

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## The Duty to accommodate

BY JONATHAN CHAPNICK, STAFF REPRESENTATIVE

**T**he purpose of the “duty to accommodate” is to make workplaces fairer, more accessible and inclusive. This article seeks to explain the basic principles behind this complex notion.

The employer's “duty to accommodate” in the workplace is required by law. Its legal sources are *the B.C. Human Rights Code* (“the Code”) and decisions of various courts, arbitrators and tribunals. “Duty to accommodate” principles have also been incorporated into BCGEU collective agreements.

Only when there is *prima facie* discrimination do employers have a duty to accommodate. Under section 13 of the Code, there is a three-part test for determining whether *prima facie* discrimination has taken place:

- The employee who is alleging discrimination must be (or must be perceived to be) a member of a group protected under one or more of the prohibited grounds under the Code. The Code prohibits discrimination in employment on the basis of race, religion, political belief, marital or family status, physical and mental disability, sex, sexual orientation, age or a criminal

or summary conviction that is unrelated to the employment or intended employment. Sex-based discrimination includes sexual harassment, discrimination on the basis of pregnancy, and discrimination against transgendered persons. Moreover, an addiction is a disability within the meaning of the Code.

- The employee must have experienced some adverse treatment or effect in his or her employment.
- The prohibited ground must have been a factor in the adverse treatment or effect.

If each of the three parts of the test is met, *prima facie* discrimination is established. Examples of *prima facie* discrimination situations include:

- An employee with a disability is terminated because of absenteeism related to his disability. Prohibited ground: disability. Adverse



# steward updates

treatment: termination. Factor: terminated because of absenteeism related to disability.

- A female employee in a male-dominated workplace loses a job competition for a supervisory position to a male employee with equal qualifications and seniority. Her employer informs her that she “would have gotten the job,” but he “didn’t think that the guys would listen to a woman.” Prohibited ground: sex. Adverse treatment: loss of job competition. Factor: lost job competition because she is a woman.

Here is an example of a situation that does not meet the test for *prima facie* discrimination:

- An employee with a bad cold misses a week of work. His cold is not related to any underlying health condition. He is disciplined for absenteeism. No prohibited ground: normal illness or ailments, such as the common cold, do not constitute disabilities under the *Code*.

## Undue hardship

Employers must then accommodate employees to the point of “undue hardship.” Once the point of undue hardship is reached, the employer will be found to have met its duty to accommodate. The following factors may be relevant to determining when the point of undue has been reached:

- The financial cost to the employer of accommodating the employee.
- The disruption of the collective agreement caused by accommodating the employee.
- Morale problems among other employees, in relation to the accommodation received by a particular employee or group of employees.
- The size of the employer’s operation.
- The interchangeability of the employer’s workforce and facilities.

- Where safety is an issue, both the magnitude of the risk and the identity of those who bear the risk.

This is not an exhaustive list of factors; there may be others, depending on the circumstances of the particular case.

## Accommodation issues

Many complex issues and questions may arise during the accommodation process, including the following:

- Could the employee seek accommodation within her current job, or within the employer’s broader operation?
- Could a new job be created, or could existing job duties be “re-bundled,” to accommodate the employee?
- How much could a job be modified to meet the employee’s need for accommodation?
- Will a temporary reassignment be sufficient, or is a permanent accommodation necessary?
- Could the accommodated employee’s pay level be maintained in their new or modified position?
- Could seniority rules be bypassed for accommodation purposes?
- What evidence is required to support a claim for accommodation?
- What obligations do the employer and/or the union have with respect to confidentiality and release of information during the accommodation process?

Unfortunately, it will often be quite difficult to answer these questions and the facts of each individual case will have to be taken into account.



# steward updates

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## Employees and the union have obligations during the accommodation process

The search for reasonable accommodation for an employee or group of employees has been referred to as a “multi-party inquiry.” In other words, it is not only the employer, but also the employee and the union, who have obligations during the accommodation process.

### The employer

The employer must take reasonable steps to accommodate the employee and must propose reasonable accommodation options. More than a negligible effort is required of the employer during the accommodation process.

In disability cases, the employer may be required to make inquiries in relation to the ability of the employee with the disability and the nature of the medical disability itself. This may include engaging in an examination of the employee’s current medical condition, the prognosis for recovery, and the employee’s capabilities for alternative work.

Before the employer takes disciplinary action to address employee performance issues that might be related to a disability, the employer must take reasonable steps to fully investigate the employee’s circumstances.

The following questions may be relevant to determining whether the employer’s conduct or standard is reasonably necessary, and whether the employer has satisfied its duty to accommodate:

- Has the employer investigated alternative standards or courses of conduct that do not have a discriminatory effect on the employee?
- If alternative standards or approaches were investigated and were found to be capable of fulfilling the employer’s work-related purpose, why were they not implemented?

- To accomplish the employer’s work-related purpose, is it necessary for all employees to meet the single standard adopted by the employer? Or can standards that are more reflective of group or individual differences and capabilities be adopted?

### The union

The union must not impede the reasonable accommodation efforts of the employer. If reasonable accommodation is only possible with the union’s cooperation, and the union blocks the employer’s accommodation efforts, the union will become a party to the discrimination.

If the accommodation proposed by the employer disrupts the collective agreement or negatively affects the rights of other bargaining unit employees, and if there are other reasonable accommodation options available, the union may be justified in refusing to cooperate with the proposed accommodation. However, in such circumstances, the union must put forward the other available reasonable accommodation options that it sees as preferable. The union cannot simply turn its back on the accommodation process.

If the union participated in carrying out or adopting the allegedly discriminatory conduct or standard, it is jointly responsible with the employer to seek to accommodate the employee. If no accommodation efforts are made, the union will share equal liability with the employer. At the same time, usually the employer will be in a better position to formulate accommodation options. As a result, the employer will be expected to initiate the accommodation process.

The union and the employer cannot contract out of their human rights obligations. They cannot refuse to reasonably accommodate an employee or group of employees simply because the allegedly discriminatory conduct or standard flows directly from a provision of the collective agreement.



# steward updates

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## The employee

The employee alleging discrimination has a duty to facilitate the search for his or her accommodation. Courts, arbitrators and tribunals will consider the employee's conduct in its evaluation of the employer's accommodation efforts.

The employee should identify his or her need for accommodation. At the same time, the employer cannot be wilfully blind to an accommodation need that has not been expressly identified by the employee.

The employee should communicate with the employer during the accommodation process and should provide relevant information (including medical information) that is reasonably requested by the employer.

In some cases, the employee may have a duty to participate in retraining to facilitate the accommodation. In addiction cases, for instance, the employee has a duty to participate in rehabilitation programs or other course of treatment prescribed or agreed to.

The employee does not have a duty to originate the accommodation solution. That duty is the employer's. However, if the employee refuses a reasonable accommodation option proposed by the employer, the employer may be discharged of its duty to accommodate. An accommodation option need not be perfect; it need only be reasonable.

## Case studies on the duty to accommodate

Examples of cases where the employer's duty to accommodate is discharged include the following:

- An employer sets certain performance standards for its vehicle maintenance workers. The purpose of the standards is to ensure that all work vehicles operate properly. The standards are objectively necessary to accomplish this purpose. An employee with

a disability cannot meet the performance standard for one type of vehicle. Her inability to meet the standard is related to her disability. She is able to meet the performance standards for all other vehicles. The employer reasonably reorganizes the employee's work, such that the terms and conditions of the employee's work remain the same, except she is no longer required to service the one type of vehicle for which she cannot meet the standards.

- An employee with an addiction is employed in a safety sensitive position. He is found to be intoxicated while performing his safety sensitive work duties. His work performance is impaired. His safety, and that of his co-workers, is put at serious risk. One co-worker is seriously injured. Similar situations have taken place before. The employee, with the employer's assistance, has made a number of rehabilitation attempts. This time, for workplace safety purposes, the employer requires the employee to take indefinite unpaid leave. The employer indicates that the employee may return to work once he no longer poses a serious risk to his co-workers and to himself. The employee is not qualified to perform the work duties in the workplace that are not safety sensitive, and he is not interested in obtaining the necessary training to perform those duties.

Examples of cases where the employer's duty to accommodate is not discharged include the following:

- An employer implements new fitness standards for its forest firefighters. One of the standards is a new aerobic standard. Evidence shows that most women have a lower aerobic capacity than most men. As a result, a disproportionate number of women cannot pass the new aerobic standard. There is no evidence that shows that the new aerobic standard is necessary for either men or women to perform forest



# steward updates

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firefighting work safely and efficiently. Nor is there evidence that it would be a hardship to implement a different aerobic standard. A female employee, who had performed forest firefighting work satisfactorily for the employer in the past, fails to meet the new aerobic standard and is terminated.

*Analysis:* *prima facie* discrimination has taken place. The employee is a woman, she was terminated, and her sex/gender was a factor in her termination. The employer has not shown that the new aerobic standard is reasonably necessary to accomplish the work-related purposes of safety and efficiency.

- An employee is repeatedly absent from work. The employer calls the employee and confronts him about his absenteeism. Their conversation lasts five minutes. The employee indicates that he suffers from chronic depression and that his absenteeism is related to his depression. The employer briefly sympathizes with the employee, but then terminates him for being absent from work.

*Analysis:* *prima facie* discrimination has taken place. The employee has a disability, he was terminated, and his disability was a factor in his termination. The employer has not fully investigated the employee's circumstances and has not considered possible accommodation options.

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# arbitration award summaries

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## ► BENEFITS

BCGEU and Community Home Support  
June 16, 2009  
Arbitration 985

Home support workers filed grievances seeking reimbursement of mileage costs for car travel between clients. The union argued the employer is required to pay them because of the way the schedules are created. The employer argued it was only required to reimburse mileage up to the cost of a monthly bus pass and there is no requirement to use a car. The arbitrator agreed with the union. The employer violated Article 27.11 of the agreement by scheduling them in a way that required workers to continue to use their cars to conduct the employer's business. The arbitrator's order was retroactive to 2007. The Labour Board dismissed the employer's appeal of the award.

## ► BENEFITS

BCGEU and Ministry of Provincial Revenue  
January 12, 2009  
Arbitration 979

The worker grieved the denial of sick leave benefits. Before her case proceeded to arbitration, she filed a human rights complaint on the same facts and issue. The Human Rights Tribunal dismissed her complaint on March 29, 2007, on the basis that her health circumstances did not meet the definition of disability. At the arbitration hearing, the employer filed a preliminary objection arguing the grievance was a "collateral attack" on the Human Rights Tribunal decision. The arbitrator agreed with the employer and dismissed the grievance.

## ► DISMISSAL

Government of BC and BCGEU  
July 8, 2009  
Arbitration 714C

The 27 year liquor store manager was terminated in 1998 for theft of alcohol. At the original arbitration (March 14, 2000), the arbitrator found that alcoholism was a contributing factor to the theft. However, because some aspects of the member's conduct were voluntary, the arbitrator found that there was grounds for discipline and upheld the termination. The union appealed and the Labour Relations Board (LRB) overturned the award. This decision created a new hybrid test applying a human rights analysis to cases involving addiction and misconduct. The LRB referred the award back to the arbitrator with direction to apply the new hybrid test. The arbitrator issued the second award on February 28, 2007. He concluded there was evidence of *prima facie* discrimination, the employer's conduct did not meet the test for undue hardship and reinstated the member to a demoted store clerk position. The employer appealed the reinstatement award to the Court of Appeal. The Court of Appeal determined that no human rights analysis was required if a member was terminated for theft. A human rights analysis is required only if the member is terminated for a reason that engages a ground of protection covered by the *Human Rights Code*. The Court remitted the matter back to the arbitrator for a third hearing. The union applied for leave to appeal to the Supreme Court of Canada. Leave was denied by the Court on February 5, 2009. At the third hearing, the arbitrator reviewed the factors from the hybrid test, including the member's alcohol addiction and his recovery, but upheld the termination because of the seriousness of the employment offence.



# arbitration award summaries

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## ► DISMISSAL

Government of BC and BCGEU  
August 25, 2009  
Arbitration 991

A 27 year employee was terminated by the Liquor Distribution Branch on the basis of alleged defamatory and demeaning comments about his store manager. The union argued termination was excessive. The arbitrator agreed with the union. He did not accept the testimony of the employer's witness that the inappropriate comments were made in front of customers. A 30 day suspension was substituted for the termination and the member was ordered to provide a written apology to his manager and attend anger management training. The employer successfully appealed the award, to the Labour Board arguing that the arbitrator failed to decide if the member made inappropriate comments in an off duty context that warranted discipline. The case was re-argued in May 2010 and the parties are waiting for the decision.

## ► DISMISSAL

Ministry of Public Service and BCGEU  
June 25, 2009 and August 31, 2009  
Arbitration 986 and 986A

A member with ten years seniority was terminated for releasing unauthorized information to the media. At the time of termination he was a Corrections supervisor and had a discipline-free record. The union argued discharge was an excessive penalty. He acknowledged his mistake, was remorseful and his actions were motivated by health and safety concerns. The arbitrator concluded the member should be reinstated and a suspension was the appropriate penalty. He referred the issue of the appropriate penalty back to the parties (#986).

The parties were unable to reach agreement on the remedy and a second hearing was held on July 27, 2009. The employer argued the member's dishonesty was so severe that he had destroyed the trust relationship and should be awarded damages in lieu of reinstatement. The union argued the appropriate penalty was a short period of suspension and/or if a demotion was ordered, it should be for a specific period of time. The arbitrator concluded the employment relationship was incapable of being restored and awarded three weeks of pay for each year of service. The union unsuccessfully appealed the award to the Labour Board.

## ► DISMISSAL

BCGEU and Government of BC  
June 15, 2009  
Arbitration 984

The union grieved the termination of a 10 year employee who assaulted a co-worker at a Christmas party. The union argued the grievor engaged in off duty conduct and termination was an excessive response. The arbitrator found the grievor had engaged in serious misconduct that was connected to the workplace but did not warrant termination. He reinstated the grievor and substituted a six month suspension.

## ► DUTY TO ACCOMMODATE

BCGEU and Northern Lights College  
April 3, 2009  
Arbitration 981

The worker argued the employer discriminated against her on the basis of disability by refusing to allow her to return to work and by failing to accommodate her during the graduated return



# arbitration award summaries

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to work program. The arbitrator reviewed the evidence and concluded the employer didn't end her return to work trial arbitrarily and the employer did accommodate her. Further, the employer had grounds to ask the member for an independent medical and the member by refusing to agree to the assessment didn't comply with her duty to accommodate obligations. There was no finding of discrimination and the grievance was dismissed.

## ► PAYMENT ISSUES

BCGEU and Absolute Traffic Enforcement  
Arbitration 723A and 724A

The union went to arbitration in 2000 and obtained an order for the payment of lost wages to several members of Absolute Traffic. The employer did not attend the hearing and refused to pay any money to the members. The company was dissolved shortly after the award was issued. The union made many unsuccessful attempts to collect on the award over several years. In 2007, the union received a tip about the location of a former director of the company.

The *Employment Standards Act* at Section 3(8) allows an arbitration board to refer an unpaid wage matter to the Director of Employment Standards.

The union asked the arbitrator to make the referral. Although the company was long dissolved, the legislation holds directors personally liable for a maximum of two months wages. A writ of seizure was eventually issued against the former director and nine years later, two former members of Absolute Traffic each received two months wages.

## ► STIIP AND LTD

BCGEU and Ministry of Children and Family Development  
October 15, 2009  
Arbitration 996

The employer filed a grievance seeking repayment of a portion of the STIIP and LTD benefits paid to a member, alleging a right of subrogation in relation to insurance settlement funds that had been received by the member for a motor vehicle accident. The member had received a global lump sum settlement amount with no allocation for specific types of damage. The arbitrator issued a lengthy award identifying principles of calculation including the formula for deduction of legal fees from the member's settlement.

