

IN THE MATTER OF AN ARBITRATION

BETWEEN

EXPERTECH NETWORK INSTALLATION INC.

(the “Company”)

and

UNIFOR

(the “Union”)

**GRIEVANCES OF NIC BEAUSOLEIL (46-12-17)
PAULO DUARTE (26-2013-2006) AND
NATIONAL POLICY GRIEVANCES EXP-CS-14-01 AND EXP-CL-14-02**

SOLE ARBITRATOR: John Stout

APPEARANCES:

For the Company:

Sarah Crossley - Norton Rose LLP
Erin Chedd - Associate Director

For the Union:

Micheil Russell - Caley Wray
Ray Mortimer – President, Unifor Local 26
Vince Gibbons – Vice President, Unifor Local 26
Joe Free – National Representative
Tim Chapman – Chief Steward
Nic Beausoleil – Grievor
Paulo Duarte - Grievor

**HEARING HELD IN TORONTO, ONTARIO ON SEPTEMBER 29, 2014 AND A
CONFERENCE CALL DECEMBER 1, 2014**

AWARD

[1] This matter, as originally referred to me, concerns three grievances filed by the Union. The first two grievances are individual grievances, filed by Nic Beausoleil (46-12-17) and Paulo Duarte (26-2013-2006). The third grievance is a National Policy Grievance filed on behalf of the “craft unit” (EXP-CS-14-01). All of the grievances allege that the Company acted unreasonable and violated the Collective Agreement by requiring medical notes from certain employees for incidental absences.

[2] At the hearing, the parties agreed to also put before me a National Policy Grievance filed on behalf of the “clerical unit” (EXP-CL-14-02). The parties further agreed that I have jurisdiction to resolve any other outstanding related individual grievance.

[3] The background facts are generally not in dispute and were outlined by Counsel. The parties also provided me with a number of documents related to the dispute.

[4] Generally, the dispute arises from the Company’s request for medical notes from various employees who were absent from work claiming they were ill. In at least one case, there is no dispute that the employee in question was ill. The Union also seeks payment for any medical notes required by the Company.

[5] The Union challenges the Company’s current policy and asserts that the Company is being unreasonable by making the requests for medical notes.

[6] The Company asserts that their current policy is reasonable. The Company concedes, rightfully in my view, that in some circumstances the policy may not have been applied reasonably.

[7] After hearing the parties' positions, I met with the parties and a mediated resolution to the grievances was achieved. The parties request that I incorporate their agreement into an award. Accordingly, I set out below the parties' agreement.

[i] Paragraph 5 of the Disability Process document shall be amended as follows: "Regardless of the length of absence, prior to the 8th calendar day, it is the manager's discretion to ask for a doctor's note. However, the request for a medical note will be based on reasonable and probable grounds."

[ii] The May 2012 Incidental Absences Report Guidelines are superseded by new training the Company will provide its managers, a copy of which will be provided to the Union and posted on the Company intranet.

[iii] The Company shall pay Duarte and Beausoleil the cost of the medical notes, provided receipts are provided, or up to \$25 in the absence of a receipt. For any other outstanding grievances, the Company shall also pay the employee accordingly if there were no reasonable or probable grounds for the request.

[iv] In keeping with the jurisprudence, payment for medical notes by an employer must be specifically provided for in the language of the collective agreement. The language of the collective agreements do not obligate the Company to pay for medical notes. However, if there is an arbitration respecting a claim that the Company did not have reasonable and probable grounds to request a medical note, then payment for such medical notes by the Company would be proper damages awarded by an arbitrator.

[v] The Company expects employees to communicate with his or her manager prior to the commencement of his or her tour of duty if unable to attend work due to illness. When employees call in prior to the commencement of the tour, if the Company requires a medical note, then the Manager shall

advise the employee as early as practical on the day of absence of the requirement to obtain a medical note, if such requirement has not already been communicated.

[vi] If the Union requests the reasons from the Company as to why they have requested a medical note in any given situation, the company shall respond within a reasonable time.

[vii] This agreement is applicable only to incidental absences, and has no application to the SDB, LTD or ADB plans.

[viii] The arbitrator is seized with respect to any issues which arise out the interpretation application or administration of the minutes of settlement.

[8] In accordance with the parties' agreement, I remain seized.

Dated at Toronto, Ontario this 1st day of December, 2014.

"John Stout"
John Stout - Arbitrator