

## THE MATTER OF ARBITRATION BETWEEN

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Ely Bloomenson Community Hospital And Nursing Home “Employer”	)	FMCS Case No. 070924-60503-3 BMS Case No.08-RA-0365 Issue: Termination
	)	
and	)	Hearing Date: 02-18-08
	)	
	)	Brief Submission Date: 03-07-08
	)	
Local Union No. 395 American Federation of State, County And Municipal Employees, AFL-CIO “Union”	)	Award Date: 03-24-08
	)	
	)	Anthony R. Orman, Arbitrator
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### **JURISDICTION**

The hearing in this matter was held on February 18, 2008, in Ely, Minnesota. The parties appeared through their designated representatives. Both parties were afforded a full and fair opportunity to present their case. Witnesses’ testimony was sworn and subject to cross-examination. Exhibits were introduced into the record. The parties stated the grievance was properly before the Arbitrator. The parties submitted their statement of issues and agreed that the arbitrator would frame the issue. There is objection by both parties to the publishing of the arbitration award due to the sensitive nature of medical information. Post-hearing briefs were submitted on or about March 7, 2008, and thereafter the matter was taken under advisement.

### **APPEARANCES**

**For the Union:**

Teresa Joppa	Attorney
Julie Revord	Grievant
Evangeline Revord	Grievant's Mother
Sandra Makkyla	Union Acting Vice-President/Acting President
Ida Rukavina	Staff Representative

**For the Employer:**

Richard Rand	Director of Human Resources
Rochelle Peterson	Human Resources/Benefits
Gwen Bakken	Director of Dietary Services and Environmental Services
John Fossum	Chief Executive Officer

**I. BACKGROUND AND FACTS**

Julie Revord, here in after referred to as the Grievant, was employed in October of 1997 as a part-time worker in the environmental service department of the Ely Bloomenson Community Hospital and Nursing Home, here-in-after referred to as the Employer, in Ely, Minnesota. The Hospital/Nursing Home is a private company. The Employer has a Collective Bargaining Agreement with AFSCME Local 395, here-in-after referred to as the Union.

As part of her orientation, the Grievant was given a handbook of policies and procedures which she acknowledged receiving on October 6, 1997 (Employer Exhibit # 1). On June 18, 1998 the Grievant was given a written warning about the excessive use of sick time and tardiness (Employer Exhibit # 3). The Grievant acknowledge the receipt of this warning. On December 3, 1998 the Grievant was again warned of excessive use of sick time with a written warning (Employer Exhibit # 4). The warning included the

statement, "I will hope you make a diligent effort to improve on your attendance, or we will have to follow the disciplinary process." The Grievant acknowledged the receipt of this warning.

Sometime in 2001 the Grievant was assigned to a full-time 80 hour per pay period position in the environmental services area.

In late 2004 or early 2005 the Grievant requested and was assigned to the laundry. At the time there was a dispute about the Grievant's rights to the assignment. The Grievant was told that she did not have to apply because she was in the same class as the laundry workers. After watching a number of other workers being assigned ahead of her the Grievant filed a grievance with the Union. That Grievance was later withdrawn by the Union. Eventually the Grievant was assigned to the Laundry.

In late 2005 the Grievant determined that she was becoming ill and sought medical assistance. On January 6, 2006 the Grievant requested and received an "Intermittent Leave" from the Employer (Employer Exhibit # 5). This leave allowed the Grievant to take time off for medical treatment and continue to work when available. On June 29, 2006 the Grievant requested a medical leave of absence (Employer Exhibit # 6). The Employer granted the requested leave of absence in writing on June 30, 2006 (Employer Exhibit # 7). Both leaves were granted in accordance with the Family Medical Leave Act.

In early February the Grievant began to call in sick. The Grievant's paid sick time and FMLA leave was exhausted. Efforts made by the Employer to contact the Grievant by telephone failed. On February 20, 2007 the Grievant was sent a letter of

termination due to her failure to come to work. The Grievant appealed the termination through the Union.

On February 26, 2007 representative of the Employer, the Union and the Grievant met to resolve the issue. An agreement was reached and reduced to writing (Employer Exhibit # 10) that allowed for the Grievant to request a leave of absence, requiring the Grievant to provide medical evidence of need and return to work as recommended by her medical provider with a medical release. The Grievant was allowed to request the medical leave of absence at the end of the meeting without the use of the standard leave of absence form (Employer Exhibit #11) and the leave was approved subject to the Employers receipt of medical documentation.

Following the February 26, 2007 meeting the Employer sent out a second letter (Employer Exhibit # 12) requesting the Grievant fulfill her obligations under the signed Letter of Agreement. A second letter (Employer Exhibit # 13) requesting she fulfill her obligations for the requested leave was sent to the Grievant on April 12, 2007. Included with the April 12, 2007 letter was a request for leave form (Employer Exhibit # 8) the Grievant had filled out at an earlier time. The Employer stated the form had been changed by the Employer's representative to reflect the date the Grievant no longer had sick leave. The Employer set a date of response for medical information from the Grievant to be submitted as of May 7, 2007.

On May 4, 2007 the Grievant's medical provider sent the Employer a medical release (Employer Exhibit # 14) for return to work on a limited schedule. The Grievant returned to work on May 14, 2007 (Employer Exhibit # 16, page 2).

In July of 2007 the Grievant called in on two different occasions that she was unable to come to work. After the second call in the Gwen Bakken, Director of Dietary and Environmental Services, here in after called the Supervisor, called the Grievant to tell her she needed to come in to work or she would be in violation of the February 26, 2007 letter of agreement. The Grievant stated she would not come in. On July 24, 2007 the Employer sent the Grievant a letter of termination (Joint Exhibit # 3). On July 26, 2007 a grievance was presented to the Employer's representative.

## **II. THE ISSUE**

Did the Employer have just cause in accordance with Article XIII – Dismissal, Suspension, Demotion, Transfer, Section. 1 of the Collective Bargaining Agreement to dismiss the Grievant?

## **III. RELEVANT CONTRACT PROVISIONS AND GOVERNING RULES**

### **ARTICLE I – INTENT AND PURPOSE**

#### **Section 1.c.**

To establish standard hours of work, rates of pay, and working conditions, and to these ends, the Employer pledges its employees considerate and courteous treatment, and the employees, directly and through their agent (the Union), pledge the Employer loyal and efficient service.

### **ARTICLE V – DEFINITIONS OF EMPLOYEES**

#### **Section 1. Full-Time:**

All regular employees who regularly work for sixty-four (64) hours or more per two week pay period.

#### **Section 2. Part-Time:**

All regular employees who work less than sixty-four (64) hours per two week pay period and have completed their probationary period.

## **ARTICLE VIII – INSURANCES**

### **Section 3.**

For employees who work an average of sixty-four (64) hours or more per pay period, the Employer shall pay \$528 (five hundred twenty-eight dollar – 100% on the date of ratification) toward the single subscriber hospitalization and medical insurance rate per month through December 31, 2006. For the insurance year beginning January 1, 2007 and beyond, all future health insurance cost increase for the single coverage plan shall be paid by the Employee. The Employer.....

### **Section 4.**

The Employer shall continue to pay the employer contribution pursuant to Article VIII Section 3 for a period of up to six (6) months for employees who become unable to work due to long-term illness, maternity-related disability, or other disability. To be eligible for contribution an employee must be currently enrolled and receiving the Employer contribution. The employee must use his/her accumulated vacation and sick leave benefits.

## **ARTICLE XII –LEAVE OF ABSENCE**

### **Section 2. Disability Leave of Absence**

A disability leave of absence shall be granted to any employee at such time as he/she has exhausted all of his/her accumulated sick leave, vacation and holiday benefits, and in the event his/her illness or disability continues after such time; provided, however, that in no event will such disability leave be of a longer duration than (1) one year from the date the employee has exhausted all accumulated sick benefits. During such disability leave the employee shall continue to accumulate seniority, but only for the purpose of layoff, returning to work and the filling of vacancies. During such disability leave, and as a condition of its continuance, the employee, when requested by the Employer, shall furnish the Employer with a physician's certificate at intervals of three (3) months or more, as may be requested by the Employer, certifying the employee's inability to return to work because of such illness or disability during the entire interval covered by such certificate. Upon the conclusion of said leave or absence, the employee shall be returned immediately to his/her last held position prior to his/her leave.

## **ARTICLE XIII – DISMISSALS, SUSPENSIONS, DEMOTIONS AND TRANSFERS**

### **Section 1.**

Discharges, suspensions, demotions or transfers to a lower classification shall be made only for just cause. An employee charged with an offense involving discharge shall be informed of such offense, in writing, ten (10) days in advance of discharge and copy thereof mailed to the Union. The Union or the employee so discharged may protest such discharge within five (5) days of the time of discharge by invoking the regular grievance procedure. If such objection is not so submitted to the grievance procedure within five (5) days, such employee and the Union shall be barred from any claim of any kind against the Employer herein.

Any employee who has, however, been discharged and which discharge is later found to be without just cause, if such determination is made as provided herein, shall be reinstated and paid for time lost, including overtime which such employee would have worked, and shall not lose seniority, vacation pay or other benefits, provided, however, that the Arbitrator may, in his/her determination of the amount of back wages to be awarded, take into consideration the wages earned elsewhere by the employee during the period of suspension.

### **Section 2.**

Examples of just cause are as follow:

- a. Gross violation of the rules of the Employer.
- b. Intoxication, drinking or the use of illegal drugs while on duty.
- c. Violating patient's rights pursuant to Minnesota statute 144.651 (the Bill of Rights for Patient and Residents of Health Care Facilities)
- d. Giving confidential information pursuant to Minnesota Statute 144.651 (Bill of Rights for Patient and Residents of Health Care Facilities)
- e. Pilfering of facility equipment, drugs and supplies.
- f. Neglect or mistreatment of facility equipment.

- g. The display of immoral or improper characteristics, or conduct unbecoming a facility employee
- h. Insubordination, including gross disobedience of orders of a supervisor or refusal to perform assigned work without just cause.
- i. Gross incompetence and workmanship in performance of duties provided the employee has been given proper notice and counseling relative to such inadequate performance of duties; and provided, further , that no alternate or suitable employment is available to such employee at the facility.

### **Section 3.**

#### **Constructive Resignation**

If an employee who fails to report to work as scheduled also fails to furnish the Employer with a justifiable excuse within forty-eight (48) hours thereof, or if an employee fails to report to the Employer with one (1) week following the expiration of a leave of absence, such employee shall then be presumed to have resigned from the service of the Employer, and his/her seniority and employment shall be terminated provided, however, that if such employee can thereafter furnish the Employer with reasonable proof that such employee could not report for work or report in or could not notify the Employer of his/her absence because of illness or unforeseen emergency or other justifiable reason, such employee shall be reinstated without any break in service record.

Any employee whose employment is terminated under this Section hereby waives his/her right to all accumulated vacation benefits.

## **ARTICLE XXI – RIGHTS OF MANAGEMENT**

The management of the facility and the direction of the working forces, the operation of the facility, including hiring promoting and retiring of employee, the suspending, discharging or other wise disciplining of employees, the laying off and calling to work of employees in connection with any reduction or increase in the working forces, the scheduling and assignment of work, and the control and regulation of the use of all equipment and other property of the Employer are the exclusive functions of the Administration; provided, however, that in the exercise of such functions, the management shall act in conformity with the provisions of this Agreement.

## **EMPLOYMENT STANDARD AND GUIDELINES**

### **ATTENDANCE**

Work attendance is vital to the function of this facility. Therefore, employees are expected to report to work on time and as schedule. Employees are expected to be at their designated work area at their starting time and they are to remain at their work site until their actual quitting time (with the exception of leaving for approved business reason and breaks). Employees are not permitted to be at their work site prior to the beginning of their shift.

When an employee will be unable to report to work, or will be late, the employee must notify his/her supervisor in advance according to departmental policy. In all cases, the employee shall provide the facility with a truthful reason for the absence or tardiness and, if applicable, the probable duration.

Excessive absences or tardiness, failure to report as scheduled, leaving the designated work area without supervisor approval, abuse of breaks, quitting early, etc. are disruptive and will not be tolerated. Employees who are found to have abused absence time from scheduled work will be subject to disciplinary action or termination.

### **IV. POSITION OF THE EMPLOYER**

The Grievant has had a long history of missed call-ins and tardiness dating back to her original date of hire. The Employer has used progressive discipline consisting of oral and written reprimands as well as constructive dismissal to correct her behavior.

When the Grievant was identified a chronic debilitating illness covered under the Family Medical Leave Act the Employer complied with the FMLA and provided the Grievant with requested leave.

When the Grievant exceeded the FMLA leave of absence period the Employer offered her extended medical leave with proper medical documentation. When the medical documentation was not forthcoming from the Grievant the Employer sent the Grievant a termination letter accepting her resignation as a constructive resignation in accordance with the contract.

The termination was appealed on behalf of the Grievant by the Union. Through negotiations between the Union, the Grievant and the Employer a last chance agreement was negotiated. The Letter of Agreement allowed the Grievant to request a medical leave of absence with proper medical documentation and return to work with a fitness for duty work plan provided by a competent medical authority. Once the Grievant returned to work the Grievant would be allowed one day of call-in per month unless hospitalized. Violation of this agreement was just cause for termination under the Collective Bargaining Agreement. This agreement was signed by the Employer, the Union and the Grievant.

The Grievant violated the last chance agreement and was terminated for just cause in accordance with the Collective Bargaining Agreement. Testimony by the Grievant in the hearing showed that she fully understood the conditions of the last chance agreement. The medical documentation provided by the Grievant provides no evidence as to her inability to come to work on July 24, 2007. The termination of the Grievant should be upheld by the Arbitrator.

**V. POSITION OF THE UNION**

The Grievant missed two days of work in the month of July 2007. One day was missed early in the month and the second day was missed due to the flu. The two days missed occurred over a lengthy period of time. The absences occurred when the Grievant was attempting to get her work life back in order after being diagnosed of chronic debilitating illness. The Employer had provided the Grievant with a medical leave of absence prior to the dismissal due to the chronic debilitating illness. The medical leave was part of an agreement that was reached on behalf of the Grievant to allow her to return

to work part-time with the opportunity to a return to work full time. As part of the agreement the Grievant would not miss more than one day per month except for scheduled appointments, scheduled days off, and hospitalizations.

Instead of returning part-time the Grievant returned full-time after securing a doctor's medical release. She was placed her on a full-time schedule. The Grievant felt forced to the return to full time work due to personal financial need. The full time work schedule was difficult to maintain given the consecutive days of work and her chronic debilitating illness. The Grievant did not miss any work days during to her initial return to work in June 2007. In July 2007, she missed one day of work early in the month and was again ill when she called in sick on July 24. The Grievant thought she had the flu, but after consulting with a doctor later the illness may have been a gall bladder problem. The Grievant informed her Supervisor of her illness on July 24, 2007, using the proper procedure. The Grievant was terminated for having missed a second day in the month of July. The Grievant did secure a doctor's note which confirmed that she was ill and unable to work on July 24.

The Grievant has missed a lot of work in the year prior due to the chronic debilitating illness. This Employer, as a health care provider, should understand and accommodate an employee struggling with this chronic debilitating illness. The Employer has not shown sufficient "just cause" to terminate the Grievant. The Grievant's diagnosis of chronic debilitating condition and clean work record should allow for a lesser penalty.

## **VI. OPINION**

The Arbitrator must consider the following three issues raised by the parties in making the decision about this termination:

1. Did progressive discipline take place by the Employer;
2. Should a lesser penalty be imposed based on mitigating factors of due to the Grievant's historical record concerning her chronic debilitating illness and work and;
3. Is there "just cause" for a dismissal?

**1. Did progressive discipline take place by the Employer?**

The Arbitrator is not persuaded by the Employer's position the Grievant is a poor employee who has had sufficient warning about her attendance problems.

As evidence of progressive discipline the Employer made reference first to an attendance policy (Employer Exhibit # 2) the Grievant had acknowledged receiving by her own signature (Employer Exhibit # 1) at the beginning of her employment on October 6, 1997. The policy put the Grievant on notice that she was expected to come to work when scheduled and to not be late. Shortly after her employment started the Grievant was given a verbal warning on June 18, 1998 (Employer Exhibit # 3) and a written warning on December 3, 1998 (Employer Exhibit # 4) due to tardiness and excessive absence from work. The next documentation of any type of discipline was dated February 20, 2007. The Employer imposed a "constructive resignation" (Employer Exhibit # 9) because the Grievant failed to return to work after her Employer approved FMLA leave had expired. The "constructive resignation" was rescinded after the Employer and the Union negotiated a "return to work last chance agreement" on behalf of the Grievant. As part of the Letter of Agreement the Employer provided a new medical

leave of absence from the date of the FMLA leave (Employer Exhibits # 8, 11 and 12). There was no additional disciplinary actions up to an until the Grievant's dismissal on July 24, 2007 (Joint Exhibit # 3).

It concerned the Arbitrator that on the morning of the arbitration the Employer's representative stated that only one personnel handbook could be located in the facility. At most times this would not be significant. In this circumstance it weakens the Employers argument about the importance of informing and enforcement of the policies with the facility's employees. Secondly, the Employer stressed that it had disciplined the Grievant prior with both an oral and written warning. For such a warning to be progressive it must directly relate to the offense that has occurred. Although the subjects of the previous disciplines were absenteeism they were so far removed from the current circumstance (nine years) as not to be relevant. In addition the Grievant was given a fulltime position and the work assignment of her choosing. Testimony by her Supervisor in the hearing stated there were complaints about her work when the Grievant was there. The Employer further attempted to show poor work performance due to an excessive amount of missed work days based on payroll records. Yet the Employer recognized the Grievant's need for "intermittent medical leaves of absence" twice. It was during these authorized leaves of absences that the Grievant had her numerous absences. The Employer took no disciplinary or corrective action which indicated any abuse of the Grievant's medal leaves of absences.

**2. Should a lesser penalty be imposed based on mitigating factors of due to the Grievant's historical record concerning her chronic debilitating illness and work?**

The Arbitrator is persuaded that the Employer has met and in most cases exceeded its responsibility in providing the Grievant with appropriate time off, as requested for the Grievant, to manage her chronic debilitating illness. When the Grievant requested her first intermittent leave, from January 2 through February 1 of 2006 (Employer Exhibit # 5), the leave was immediately approved by the Employer. Further, when the Grievant requested a second leave on June 29, 2007, which was open ended (Employer Exhibit # 6), the Employer immediately approved it.

The Employer, through the Grievant's Supervisor, attempted for approximately three weeks attempted to make direct contact with the Grievant concerning her FMLA leave running out and the need to get medical documentation for a further leave of absence. The Grievant failed to respond to the Employer's request to provide necessary medical documentation or making direct contact to resolve the issues. The Employer then took the harsh step of terminating the Grievant's employment. This action forced the Grievant to respond directly to the Employer.

As a result of the termination the Employer, Union and the Grievant reached a "last chance agreement". As part of the agreement the Employer again approved a medical leave of absence for the Grievant with the condition she would provide proper medical documentation. One month after the leave of absence was granted the Grievant had not provided any medical documentation and it was necessary for the Employer to send a letter requesting the information (Employer Exhibit # 12). On April 12, 2007 a second letter of request (Employer Exhibit # 13) was sent to the Grievant as the medical information was not forth coming. Testimony by the Grievant's Supervisor stated she continued to call the Grievant to get the medical information. Not until May 4, 2007 was

any medical information forth coming (Employer Exhibit # 14). Upon receiving the medical documentation the Employer scheduled the Grievant as directed by the medical report. The Employer took no disciplinary action against the Grievant for not providing the requested medical information for over two months.

For the Arbitrator to provide a lesser penalty based on the mitigating circumstance of the Grievant's debilitating chronic illness the Arbitrator would have to ascertain the Employer failed to provide "due process" or that the penalty was too severe for the offense. If the Arbitrator did not finding a failure of "due process" or that the penalty was too severe for the offense the Arbitrator would be exercising leniency. In Elkouri & Elkouri, "How Arbitration Works", Sixth Addition, Page 963, it states:

Mitigation by an arbitrator of a penalty found to be too severe should not be confused with the exercise of leniency (or clemency). The distinction between these actions was emphasized by one arbitrator when he recognized the power of arbitrators to modify penalties found on the basis of mitigation circumstances to be too severe for the offense, but at the same time declared that arbitrators have no authority to grant clemency where the penalty assessed by management is not found to be too severe.

In the present case the Arbitrator has found no lack of "due process" and the penalty was agreed to in the "Last Chance Agreement" negotiated by the Employer and the Union and accepted by the Grievant.

### **3. Is there "just cause" for a dismissal?**

On February 20, 2007 the Employer terminated the Grievant under ARTICLE XIII – DISMISSALS, SUSPENSIONS, DEMOTIONS AND TRANSFERS, Section 3. Upon receiving the termination the Grievant and her Union Representative met with the Employer's Representatives to appeal on February 26, 2007. At that meeting all the

witnesses testified the parties negotiated a Letter of Agreement which was executed by the Employer, Union and Grievant.

Testimony by all of the witnesses stated it was approximately four hours long, the appropriate people with authority attended, all members in the meeting had the ability to participate, there were separate deliberations by both sides and a final document (Employer Exhibit # 10) was created. The Letter of Agreement was to be the foundation for the return to work and rehabilitation of the Grievant as an employee. The Letter of Agreement allowed a “quid pro quo” of the certainty of return to work for the Grievant in exchange for giving up certain rights towards progressive discipline. As the Arbitrator was not in the meeting he is bound by the written word of the Letter of Agreement in the context as provided for through witnesses’ testimony.

In the general context the Grievant would request and be granted a medical leave of absence with appropriated medical documentation. The Grievant would return to work with an appropriate schedule based on her needs as provided for in a medical release. The Grievant would be allowed time off for medical appointments. Because of the Grievant’s absenteeism the Grievant would be allowed only one day absence per month, and such absences would not be cumulative. The only exception would be for inpatient hospitalization. Testimony by all witnesses stated the original draft of the document had no exceptions. Further testimony by all the parties stated this issue had extensive discussion and the Employer relented to the Union’s proposal to allow for hospitalizations. It is a later disagreement between the Employer and the Grievant as to the interpretation of this section as to whether “just cause” exists for the Grievant’s dismissal.

In Elkouri & Elkouri, "How Arbitration Works", Sixth Addition, Page 971 states:

After determining that the last-chance agreement is enforceable, the arbitrator's role usually is limited to determining whether the employee, or in some cases, the employer, violated the terms of the agreement. When considering whether there is just cause for discharge under such agreements, arbitrators do not apply the same due process consideration or procedural protections as under a normal discharge or disciplinary matter. According to one arbitrator:

Arbitrators encourage such progressive programs of salvage and rehabilitation by strict enforcement of such "last chance agreements" in accordance with the terms which the parties, including the employee, have been willing to accept. However harsh or strict such terms and even though the arbitrator might well read such condition as unfair, that cannot be his concern.

Such agreements do, however, have some limitations, and neither the union nor the employee may, by the terms of the agreement, be deprived of access to the grievance and arbitration procedure. Nevertheless, last-chance agreements should not ordinarily be construed as entitling the employee to a progressive discipline scheme provided in a collective bargaining agreement.

In the present case the Arbitrator finds all the parties created an enforceable agreement which the Arbitrator is obligated to enforce. Any actions prior to the letter of agreement on February 26, 2007 (Employer Exhibit # 10) are not relevant because they were settled on the day of the Letter of Agreement by all of the parties.

The only issue is what the Grievant understood about Section 4 of the agreement. Was the Grievant's understanding contrary to the other witnesses. It was the Grievant's testimony that she was present when CEO John Fossum and Business Representative Ida Rukavina discussed the aspects of Section 4 and came to a compromise as written in the Letter of Agreement. Further, the Grievant testified that she was asked if she understood and could live by the agreement, which she answered in the affirmative.

After the agreement was in place it took several months the Grievant to return to work on May 14, 2007. While the Employer, through presentation of its case, indicated the Grievant did follow through on her commitments within the letter of agreement, it took no disciplinary action against her and therefore has little relevance in this decision. On June 21, 2007 the Grievant had an unexcused absence and again on July 3, 2007. By the Grievant's own testimony she knew when she called in that she would be getting a call back from her Supervisor because she had already missed a day in July. The Grievant was clearly aware that she would have had to be hospitalized and she did not think it was fair when she had a legitimate illness like the flu. Testimony by both the Grievant and her Supervisor makes it clear that the Grievant understood she would lose her job by not coming in or going to the hospital. This was the choice the Grievant made which was clearly in violation of the letter of agreement Section 4.

The Arbitrator feels he must address the medical documentation (Union Exhibit # 1) provided by the Grievant to substantiate her illness in support of her case. The Grievant did not go to the Doctor for two days after on July 26, 2007. This document provides no evidence as to the inability of the Grievant to attend work on July 24, 2007. Further, there is no relationship, nor has the Grievant asserted, that the absence was due to her chronic debilitating illness.

Although the Grievant felt the Employer was being unfair in its requirement for the Grievant to be hospitalized for any absence of more than one day in accordance with Section 4 she agreed to it when she signed the Letter of Agreement. The Grievant gave up her right to progressive discipline in exchange for the ability to return to work. The "just cause" was clearly defined in the Letter of Agreement .

**VII. AWARD**

The Grievant was discharged for “just cause” as provided for under Section 4 of the Letter of Agreement when she missed more than one day of work in the month of July and was not hospitalized. The grievance is hereby denied.

Issued and ordered on this 24th day of March,  
2008 from Duluth, Minnesota.

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Anthony R. Orman, Labor Arbitrator