

Lock Talk



A publication of the OPSEU Corrections Division • February 12, 2010

Some questions and answers on ASMPP

Information in the February 10 edition of Lock Talk has raised some concerns regarding the Attendance Support and Management Pilot Program (ASMPP), the recent grievance decision and the union's role in the process. Here are some answers to the questions you have been asking.

Q. Why did the union agree to the ASMPP?

A. The union did NOT agree to the ASMPP, it is a management program. Please refer to Appendix COR13, a letter from David Logan dated March 12, 2009.

Q. In the COR 13 letter, the union is involved in a joint committee with the employer. Doesn't that mean the union agrees to the attendance program?

A. No. The committee is established so that the union can monitor the rates of attendance to make sure the employer is measuring them properly to determine whether the attendance targets as set out in Appendix COR7 are met. The committee is also there so that we can jointly explore other avenues to improving the resources available to help members improve attendance, as well as trying to make our workplaces safer and healthier. The union's only in the Joint Attendance Strategy and Implementation Committee (JASIC) is to protect the rights of the members who are involved in ASMPP.

Q. Does management have a right to have a sick program?

A. Yes. These programs are commonly found in many workplaces. It is also the union's right to challenge these programs, which we have and will continue to do.

Q. Why did the union agree to have an expedited grievance decision made on ASMPP?

A. Initially, the union had a scheduled hearing on ASMPP set for February 22nd, 2010. This was the only date we could get scheduled, and many more were going to be needed, possibly stretching out for months or even years.

In the meantime, many of our members were in Stage 3 of ASMPP, and rapidly progressing towards Stage 4. No consideration was being given to why these members were absent, and the members and the union feared that members would be disciplined and possibly fired before we could get the grievances heard at a regular GSB hearing.

GSB Vice-Chair Brian Keller was available for an expedited hearing and the parties agreed to have him hear arguments from both sides. The union agreed to this process so that we could get fast protection for members that are legitimately ill or disabled.

(Continued on page 2)

Questions and answers (cont'd)

Q. What did the union win at the hearing?

A. As reported in the February 10 Lock Talk, the union achieved significant victories to protect members who are placed in the ASMPP:

- The employer must exercise reasonable discretion with “non-culpable absenteeism” (innocent, or absenteeism that is not within the workers’ control).
- The employer must deal with employees on an individual basis, taking into account individual circumstances, as an employee progresses through the various levels of the ASMPP. Previously, the employer would not take into account the circumstances that led to an employee’s absence. Now they must do so.
- Absences that flow from a disability as defined by the Ontario Human Rights Code must NOT be included in ASMPP.
- The employer cannot terminate any employee for WSIB-related absences.
- The employer must negotiate with the union an expedited process to deal with any grievances arising out of ASMPP.

The only thing the union didn’t get at the hearing was an increase in the ASMPP threshold levels.

Q. Can’t the employer still fire you for innocent absenteeism?

A. Yes. All employers have the right to terminate an employee for innocent absenteeism. However, what the union won at the GSB was the language “reasonable discretion.” It puts additional onus on the employer to defend their decisions. The process must be reasonable and any decision made by the employer under the process must also be reasonable.

Q. Why is “reasonable discretion” so important to the members in this decision?

A. The “reasonable efforts” clause in the 1996 OPS collective agreement (which dealt with layoffs) saved thousands of OPS jobs. Why? Because the employer had to make reasonable efforts to place a laid-off employee in another position (which in most cases, they couldn’t). For those same reasons, “reasonable discretion” will allow the union to argue that, in the event a member is disciplined or terminated for innocent absenteeism, the employer did NOT exercise reasonable discretion in doing so. This language provides a safety net where none existed before.

Q. What are some examples of disabilities under the Ontario Human Rights Code?

A. “Disability” covers a broad range and degree of conditions, some visible and some not. A disability may have been present from birth, caused by an accident, or developed over time. It includes physical, mental, and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions. Under the **Code**, protection from discrimination because of disability includes past, present and perceived conditions.

You can read about disabilities under the Ontario Human Rights Code at <http://www.ohrc.on.ca/en/issues/disability>

(Continued on page 3)

Questions and answers (cont'd)

Q. Why were all the grievances in Appendix A dismissed?

A. When members see that a grievance is “dismissed” it is interpreted that the grievance was lost. In actuality, the grievances in Appendix A were all worded similar to the Policy/Union Grievance, and it was THAT grievance that went forward to the expedited hearing. After we received the decision from Vice-Chair Keller, the individual grievances were “dismissed” because the gains we won applied to all members affected by ASMPP. However, individual grievances that are specific to a member’s circumstance are still active and moving forward.

Q. Under this program, if I feel I am not being given proper consideration for my medical circumstances, do I have a right to grieve?

A. In the Award, the employer must negotiate a dispute-resolution system to deal with ASMPP grievances. We want an expedited process that has an attached GSB Vice-Chair with a history of hearing health-issue cases. In the meantime, if you feel that your occurrences of sick time or absenteeism have not been given reasonable consideration, you should bring this to management’s attention and subsequently file a grievance if your concerns are not addressed.

Q. What should I do if the employer will not accept my medical documents?

A. If the employer refuses to accept your documentation of medical requirements, then you should immediately seek advice from your local executive and send a letter to the superintendent/staff services manager.

If you have more questions and concerns, please contact Eddy or Glenna.

Authorized for distribution:



Eddy Almeida, MCSCS MERC Chair



Glenna Caldwell, MCYS MERC Chair



Warren (Smokey) Thomas, President