

Grievance #11-E-00429

Decision: August 4, 2015

Arbitrator: Paula Knopf

Grievor: Eena Kullualik

Department: Health & Social Services

Issue: Termination

The Grievor was a long-time Government of Nunavut employee who was recruited from her position as a Clerk-Interpreter into the position Community Social Service Worker (CSSW) Trainee. The Grievor was to receive training and mentoring during the trainee period of two-three years. After that an indeterminate Community Social Services Worker position would be offered provided that she passed the traineeship and demonstrated an ability to assume the responsibilities of a CSSW, and provided that a Direct Appointment to Community Social Services Worker would be approved.

The traineeship position was funded through a third-party with funding only guaranteed for a three year period. The Grievor was direct appointed to the CSSW trainee position in September, 2008. Cabinet approved the direct appointment for a two - three year term, retroactive to February, 2008. Before the direct appointment went through the Grievor was hired on a series of casual staffing actions to do the duties of the CSSW Trainee, from January 21, 2008 to October 17, 2008.

Following the Cabinet decision, the department sent a letter of offer on September 30, 2008 wherein it stated that the Grievor was hired on an **indeterminate** basis for the CSSW trainee position, taking effect February 21, 2008. The Grievor accepted and signed the offer. Shortly thereafter the department realized that the indeterminate status had been offered in error, contacted the Grievor and advised that a new letter of offer was being forwarded for her signature. The amended letter, sent November 12, 2008, indicated the offer was for a **term** CSSW trainee position, ending February 25, 2011. The Grievor signed the amended offer although it was not clear she accepted it.

On March 1, 2011 the department contacted the Grievor to extend the end of the term to April 30, 2011 indicating that unless she was able to pass the traineeship by that time her term would end. On April 29 she was notified that she had not successfully met the requirements and therefore her employment would be **terminated April 30, 2011**, which it was. The grievance was filed May 5, 2011 requesting reinstatement since, as an indeterminate employee, her termination was not appropriate.

Decision: The grievance was dismissed. The Union's reliance on the doctrine of estoppel was not accepted as the three basic components necessary to establish estoppel – a clear promise, reliance on that promise, and detriment – were not proven. The Arbitrator noted that:

“It is hoped that the facts of this case encourage better communications and more careful explanations to employees being offered Term appointments. Term appointments are rarer than Casual or Indeterminate ones in this bargaining unit. So it would benefit everyone if more clarity is given when such appointments are made. Further, **it would have helped all concerned if the amended letter of offer had explained the reason and implications for the change.**” [emphasis added]

The Arbitrator did not accept the Employer's argument that the grievance should be disallowed as it was not filed within the time limits set out in Article 35.09 of the Collective Agreement. Her reasoning was as follows:

“Article 35.19 allows the parties to extend time limits by mutual agreement. Although there was no actual arrangement to do so in this case, it cannot be overlooked that the Employer did not raise a timeliness objection until the day of the hearing, over four years after the grievance was filed. Therefore, **the silence of the Employer on the point of timeliness throughout the grievance procedure... can be interpreted as a waiver, albeit inadvertent, of any timeliness objection.** [emphasis added]