



What's New in HR Law

Arbitrator finds employer not required to reimburse costs arising from transition to remote work

December 6, 2021

Bottom Line

In [Toronto District School Board v CUPE Local 4400](#), Arbitrator Gedalof held that the Toronto District School Board (the “Board”) was not obligated to reimburse Board employees for expenses arising from the transition to working from home. The grievances arose after a large number of Board employees transitioned to working from home due to the COVID-19 Pandemic. The union alleged that the Board’s failure to reimburse the costs incurred from the transition constituted an unreasonable exercise of management rights and constituted a violation of the collective agreement as well as the *Employment Standards Act, 2000* (the “ESA”).

Background Facts

On March 12, 2020, all publicly funded schools in Ontario were ordered to be closed. Remote learning commenced on April 6, 2020. While schools briefly opened again in September 2020, subsequent closures would be ordered for the rest of the school year. Throughout this time, Board teachers continued to work remotely or through a combination of working from home and attending the workplace.

The Policy

In response to the union's claims for reimbursement, the Board relied on a policy that it issued in April 2020 entitled "Banking and Financial Protocols for School Staff During the TDSB School Closure" (the "reimbursement policy"). The reimbursement policy was updated on May 29, 2020 to state that while staff's out-of-pocket purchases of technology equipment, computer peripherals and supplies for work from home would generally not be reimbursed without prior approval, each claim for reimbursement would be assessed on a case-by-case basis.

The Decision

The union's central arguments were that the Board was unjustly enriched when it improperly passed on its operational costs to its employees and, in doing so, the Board breached the collective agreement and the *ESA*. Moreover, the union argued that where the Board is required to reorganize its operations, it was no more entitled to "commandeer" employee homes, resources, devices, and bandwidth or wages required to pay for these things, than it would be to require employees to pay for operational infrastructure during "normal times".

The Board disagreed and argued that, generally, reimbursement for employment related expenses must be bargained as a benefit or entitlement under the collective agreement and the parties had simply not bargained for any such provision. The Board also submitted that its employees had continued to receive full wages in the usual course throughout the pandemic and further noted that such payments were being made without employees incurring the usual expenses related to attending the workplace. To this end, the Board argued that its reimbursement policy was a reasonable exercise of management rights in all of the circumstances.

In dismissing the grievance, the Arbitrator stated that the starting point to assess the union's claim for monetary entitlement on behalf of its members is in the collective agreement. Since there was no such provision, the Arbitrator shifted focus to determining whether the Board acted within its management rights in implementing remote work and the reimbursement policy in question. In determining that the collective agreement did not preclude the Board from enacting emergency related measures or policies, the Arbitrator cited with approval Arbitrator Knopf's approach in [*Dalhousie Faculty Association and The Board of Governors of Dalhousie University*](#) with respect to the question of management rights during the global pandemic. Thus, Arbitrator Gedalof held that the Board did exercise its management rights in a manner that was not arbitrary, discriminatory, or in bad faith when it implemented its reimbursement policy. Employees were noted to have been given the opportunity to seek approval for expenditures prior to incurring them and to consider possible alternatives with the Board.

Arbitrator Gedalof also rejected the union's arguments that section 13 of the *ESA* had been breached when the Board did not reimburse the expenses sought by the union and that the Board had been unjustly enriched. Namely, the Arbitrator clarified that section 13 only prohibits the withholding or improper deduction of wages and held that the Board neither withheld nor required employees to return wages in applying the reimbursement policy. Moreover, Arbitrator Gedalof rejected the union's argument that the Board had been unjustly enriched because the union had failed to establish the existence of the three requisite elements for unjust enrichment.

Check the Box

Arbitrator Gedalof's decision provides an indication of how arbitrators may consider an employer's obligation to reimburse the expenses or costs incurred by its employees during the process of transitioning to remote work amidst the pandemic.

Additionally, as with most cases issued during the COVID-19 pandemic, the context and nature of the workplace are significant considerations when assessing the reasonableness of a policy. Employers that intend on introducing policies addressing entitlement to reimbursement for expenses arising from a transition to remote work should consider how such claims for reimbursement are assessed and how to discern between essential and non-essential purchases.

Need more information?

For more information regarding workplace management during the COVID-19 outbreak, contact [Daniel Park](#) at 647-212-1356, or your regular lawyer at the firm.



Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500,
PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filiation.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filiation.on.ca

Hamilton

1 King Street West, Suite 1201
Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filiation.on.ca