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Administrative Law Case Study

The Expert Report

On the night of December 7, 2010, Alexandra Cooper was at her desk preparing for the next day's arbitration hearing when the phone rang. She represented the union in a grievance filed by a security guard who was dismissed after being caught stealing to support his drug addiction. The doctor who monitored Carl's monthly drug tests, and provided a report on which Alexandra had planned to rely, was calling to say that he could no longer stand by his opinion. Carl had just tested positive for drugs. Alexandra had twelve hours to decide what to do.

The Lawyer

After being licensed in 2008, Alexandra Cooper joined a boutique litigation firm in Hamilton, Ontario. She spent the majority of her time representing the firm's union clients at arbitration hearings. Alexandra received the Weiss file from the union representative who had handled the grievance up to the month before the hearing. She knew that it would be difficult to achieve the grievor's primary objective – to be reinstated – and was not even sure what result she could obtain for him now that the doctor had recanted his opinion. An hour before the hearing was to begin, Alexandra and Carl sat down with the lawyer representing the employer to discuss a possible settlement.

The Grievor

Carl Weiss, 48, worked for Premium Auto Parts Ltd. for approximately ten years before he was fired in December 2009. He became addicted to meth amphetamines in 2007, shortly after his wife died and he began seeing a woman who was a regular meth user. His manager noticed that he was frequently absent from work and confronted him about his behaviour. When he admitted that he was an addict, the company sponsored in-patient care for him at a drug rehabilitation centre.

Only one month after completing the program, he started using drugs again. Desperate for money to support his girlfriend's habit as well as his own, he started stealing from the company's warehouse and his activities were captured by security cameras. After being fired, he left his girlfriend and started seeing a doctor every month for counseling and random drug-testing. He had been sober for eleven months when he started using meth again at a party. The drugs were still present in his system when he was called in for another test. When he learned from his doctor that he had tested positive, he was devastated. He hoped that his lawyer could find a way to persuade the company to reinstate him in spite of his latest drug test. He asked Alexandra not to disclose his relapse to anyone and to rely on the doctor's report.

The Employer

Premium Autoparts (PA) Limited sold parts and accessories for over thirty makes of cars and trucks. The company's factory was based in London but it shipped to car manufacturers all over North America. The company's senior managers were relieved when they obtained the evidence they needed to fire Carl as his absenteeism and treatment program had cost the company a lot of money. When they received the expert report from his doctor, stating that Carl had tested drug-free for eleven months, they were concerned that they might be ordered to reinstate him. The company's lawyer was instructed to make a deal that would avoid having Carl return to work.

Conclusion

Alexandra recognized that without being able to put the expert report before the tribunal, her chances of success in the grievance arbitration were limited. She knew also that opposing counsel had the right to cross-examine the doctor if she put the report in evidence. She needed to find a way to obtain the best result for her client under the circumstances, without compromising her professional duties and principles.