

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE TOWN OF HAY RIVER

Employer

-and-

PUBLIC SERVICE ALLIANCE OF CANADA  
(as represented by its agent Union of Northern Workers)

Union

**GRIEVANCE RE: A. COOMBS**  
(Grievance Number: 17-E-02196 - Written Warning)

**AWARD**

Before: Thomas Jolliffe, Q.C.

Representing the Employer: Christopher Buchanan, Counsel

Representing the Union: Michael Penner, Counsel

Hearing Date: April 1, 2022 (Via Zoom)

**Date Award Issued:**  
**April 6, 2022**

**Introduction:**

1. The Union has grieved on behalf of Ashley Coombs, the Aquatic Supervisor of the pool complex in the Hay River Recreation Centre, in response to her having received a written warning letter after missing what was described therein as a “very important meeting” scheduled by the Director of Recreation & Community Services for the Town of Hay River (Jim Darby). The meeting was scheduled by him to take place in his office at an appointed time on the morning of Friday, October 20, 2017, pursuant to an email sent out the previous day by Mr. Darby. It was scheduled for purposes of discussing the R&CS budget for 2018. The factual circumstances alleged by him as set out in the letter, stated that the grievor had previously missed several scheduled matters and further:

When I questioned you about why you did not make the meeting, you used the recent pool closure as an excuse. If that was the case, you did not have the courtesy to let me know that you would be unable to make the meeting, either by phone or text, both of which you have.

2. Mr. Darby went on to state his expectation that if the grievor was not going to make a meeting she had been scheduled to attend: “you must make every effort to inform the meeting organizer in advance”.

3. At Level 2 of the grievance process, the Union responded as follows:

Ashley Coombs has acknowledged that she did, in fact, miss the scheduled budget meeting with Mr. Darby on the morning of 20 October 2017 at 10:30. Mr. Darby was well aware that there was an unexpected operational emergency at the pool that morning and not to no one Ms. Coombs is required to reassign work, reschedule staff and assist in the effort to resume services at the pool. There was no intent to disregard or disrespect Mr. Darby by not attending the budget meeting and therefore no culpable behaviour by Miss Coombs.

4. The Union's Step 3 written response was to the same effect although it is known that at the same time the Union advised the Employer that in an attempt to resolve the matter, it and its member were "receptive" to reducing the written reprimand to a verbal warning. There was no settlement accepted, and at this point, the Union disputes there was any culpable conduct. It asserts there was no cause for any discipline, despite the final level offer to finalize the matter short of arbitration. By the grievor's description, she disagreed with that offer. The Union now puts the Employer to the strict proof of its allegation of wrongdoing.

**Employer Evidence:**

5. The Employer's only witness in this matter, Ruth Boden, at the time of this incident in October 2017 was the Director of Finance and Administration for the Town of Hay River. Since May 2019 she has been employed in a private sector position in Alberta. She testified via the remote Zoom platform from her home office in Alberta. The grievor's immediate superior Jim Darby, who had scheduled the meeting with her, having later issued the warning letter, is likewise no longer employed by the Town, and he did not testify. Mr. Darby is understood by the Employer to currently reside in another jurisdiction.

6. In 2017 Ms. Boden's management duties for the Town included exercising far ranging financial responsibilities in addition to overseeing the Human Resources Department, at that point not having an HR manager. Ms. Boden in testimony reviewed the Position Description document for the Aquatic Supervisor which in addition to the incumbent hiring and supervising staff for the Recreation Centre's 25 metre pool, her duties included planning, developing and evaluating pool related activities, developing schedules for pool use, and pool program promotions. The incumbent

was responsible for maintaining the facility to ensure the pool was safe and clean, such as taking water quality samples, making adjustments to chlorine levels as required, pool maintenance and pool chemistry. She was expected to coordinate with facility maintainers and Public Works staff as needed to ensure the safety and maintenance of the pool and entire recreational facility. She was also required to work alongside the Lead Hand (Kim Tybring) whose maintenance and supervisory duties encompassed the entire Recreation Centre.

7. Ms. Boden testified that she was aware that a meeting had been scheduled by Mr. Darby, notified in an email sent on the previous morning to the four supervisory staff members who headed the four departmental areas coming under his management. The email scheduled their individual meetings to last a half hour starting at 10:00 a.m. on October 20. He stated therein that he had gone through the first round of budget work the previous night with the Director of Finance, Ms. Boden, and “therefore I would like to arrange a meeting with each one of you to go over the findings and discuss your department budget in detail”, indicating therein that 30 minutes for each person should be enough time to review their areas line by line. The grievor’s meeting to deal with the budgeted items for Aquatic was set for 10:30 a.m. Mr. Tybring’s meeting with Mr. Darby was set for 11:00 a.m.

8. There is no doubt that the grievor failed to attend her meeting. By Ms. Boden’s description, shortly subsequent thereto, presumably the same day or possibly the next workday, Mr. Darby complained to her, indicating that he was having “an awful time” getting the grievor to respond to directions, and that she had been missing meetings with him. At that point he had held the Director’s position for the previous approximate six months. By Ms. Boden’s recollection, her response was

that he had “better start writing it up”. There is no indication from her testimony that upon Mr. Darby complaining, she sat down with the grievor to discuss what had occurred which might have kept her from attending the meeting, even though she admittedly was handling the HR duties at that point. Nor was there any evidence that Mr. Darby discussed with the grievor her failure to attend.

9. Ms. Boden testified respecting the significance of the financial accounting process and budgeting in the various areas coming under Mr. Darby’s management scope. She supported his having arranged the four half-hour meetings for the morning of October 20, in that the budgetary details needed to be put together for the next Town Council meeting. There was a time constraint within which they were working. She understood that the Recreation Centre, particularly the pool budget, was always a “big chunk” of overall Town Council budgeting. The impact of these meetings not occurring as scheduled, apparently set on one day’s notice, was that the budgeting process could be delayed, although she admittedly did not know what the impact was concerning the grievor’s missing her meeting on the morning of October 20. She did not indicate being aware when or even whether Mr. Darby and the grievor thereafter met on the budgeting issues covering the pool’s operations. At one point she remarked that ultimately Mr. Darby presented his compiled budgeting information but it was “late”, his explanation being that he did not have all the necessary input from the pool. In any event, the budget was approved by Town Council.

10. Ms. Boden testified that she recalled having been made aware at some point that there were difficulties with the pool chlorine situation on that day. By her understanding Mr. Tybring would have been involved in dealing with the problem, inasmuch as he oversaw maintenance issues at the Recreation Centre. The grievor, she agreed could have had some involvement. She also understood

that whatever the extent of the problem Mr. Tybring was able to attend his half-hour meeting scheduled for 11:00 a.m. in the Town's office complex located in another building about a block away from the Recreation Centre. She said she had never heard that he was supposed to advise Mr. Darby that the grievor was unable to attend, although there was no evidence that any investigative meeting occurred prior to the warning letter being issued.

11. On being asked for her view why the warning letter was issued, Ms. Boden testified that if it were really a situation where the grievor could not have attended her meeting with Mr. Darby scheduled for 10:30 a.m. that morning, concerning which she had no first-hand knowledge, the grievor should have at least contacted Mr. Darby as a matter of "common courtesy" and explained the situation to him. It was important for her to show that level of respect, remarking that the other three invitees had attended their meetings. She understands that the grievor had already received verbal warnings concerning her questionable attitude towards attending scheduled meetings, although there was no documentation placed in evidence, no coaching notes nor anything of that nature. She would have had no involvement at that level. Her information in that respect came from Mr. Darby whom, she said, never provided her with any documentation. She also indicated that she does not know about the extent of the emergent pool issue on October 20, 2017, what it involved or how serious was the situation presented. She agreed that if there had been an emergency that morning at the pool it might well have been something that required supervisory staff's attention at least for some period of time. She said that she did "not know much about" the pool's chemical safety standards and issues related thereto.

**Union Evidence:**

12. The grievor testified on her own behalf as the only other witness in this matter. By her description, she was appointed the Aquatic Supervisor for the new pool complex in 2007. During her testimony she described her day-to-day responsibilities in managing the pool, its activities and maintenance requirements associated with its operation. She briefly reviewed her job description as previously remarked upon by Ms. Boden, it having been entered in evidence. The grievor acknowledged being well aware of the email scheduling notice received on October 19 setting out the half-hour meetings for the next morning, hers to begin at 10:30. By her description she had prepared her budgeting proposal for the upcoming year to be discussed with Mr. Darby at that time.

13. The grievor testified that on starting her workday at about 8:30 a.m. on Friday, October 20, 2017 she was approached by a staff lifeguard who indicated that he had discovered a problem with the pool's chlorine level. She recalled his telling her that there was no chlorine being fed into the pool at that point and the measurable chlorine levels had dropped below what was permissible for pool operation. Upon her inspection of the equipment in the maintenance room she observed the one of the automatic feeders was flashing its alarm, which meant the system was down. Her inspection revealed that there could be a chlorine leak. They needed to keep the pool closed to the public while seeing what could be done with the automatic feeder system to correct the situation. By the grievor's description, following her initial inspection, she was able to bring Mr. Tybring into the situation by about 9:00 a.m. where he started working on isolating the problem and bringing the system back on line. She testified that her role at that point was to stay on site in order to perform constant monitoring, checking the system, and once it was back within an acceptable operating standard needing to make sure that another lockout did not occur, and that the chlorine feeding system

continued operating smoothly without anything causing another shutdown. She continued doing the required water testing and ensuring the pool could be open to the public at some point that day in order to continue with its scheduled program.

14. By her testimony, she reasoned that she would not be able to make her 10:30 a.m. appointment with Mr. Darby, needing to be involved throughout the morning in monitoring the automatic system for chlorine level, after Mr. Tybring was successful in bringing the feeder system back online, checking to see that everything was still running smoothly and the pool was coming back within balance, which included adjusting the caustic soda levels. By her description her work that morning in dealing with the problem came within her responsibilities as the Aquatic Supervisor in dealing with an emergent situation. She said that as the team leader for pool operations she continued doing what had to be done to ensure everything was made ready for the public, and by her description, given the extent of the problem they had faced that morning, it was not something she could delegate to a lifeguard. The emphasis was on safely opening the pool without any inordinate delay.

15. The grievor testified that Mr. Tybring was aware that she would need to stay at the pool complex to do her water testing and monitor the situation. By her description on his leaving the pool area at about 10:00 a.m. she said that he indicated he was going over to the Town office, and would tell Mr. Darby about the situation keeping her at the pool. We know from Mr. Darby's email that Mr. Tybring was one of the four supervisors on the list for the morning's meetings, scheduled to be held back to back. While assuming that Mr. Tybring would be conveying her difficulty, by her version, the grievor testified that at about the same time as her meeting was to start, she also made the effort



to “touch base” with Mr. Darby directly by calling his personal cell phone. There was no answer. By her version, she left a voice message, and also sent him a text message. She said that they had each other’s cell phone numbers on their contact list which is how they sometimes communicated. There was no response, and she missed the meeting. By her description she nevertheless was able to thereafter reschedule the meeting, and thinks they were able to meet on the next workday, being Monday, October 23, when she presented her budgetary figures for the pool complex, answering his questions at that time.

16. In her testimony the grievor disputed that she had developed a habit of missing meetings and not being cooperative. In her cross-examination she outright denied missing any meetings, and would not have missed the meeting in question with Mr. Darby except for having to deal with the situation presented at the pool, concerning which she was steadfast in her testimony, saying firstly that it required she not leave the complex that morning, and secondly, that she had attempted to reach Mr. Darby and had left a message in addition to understanding from Mr. Tybring that he was going to be talking with him about the situation at the pool.

17. During her cross-examination, the grievor did not resile from her testimony that she tried to reach Mr. Darby by calling his cell phone and also leaving a text message. She also testified that it was not a matter of switching-off with Mr. Tybring in order to attend her meeting, they being scheduled a half-hour apart. By her description Mr. Tybring had accomplished what he needed to do in getting the system back on line and by about 10:00 a.m. was able to leave the pool area. It was her job to monitor the situation to make sure it continued to run smoothly and no further alarms were activated, ensuring that the chlorine levels in the pool came within operating levels. She agreed that

she had not sought Mr. Darby's advice at the beginning of the emergency that morning, indicating that it was not his responsibility to have become involved at that point, that there was nothing he could offer to assist correcting the mechanical problem. They worked it out, and at least one of them, Mr. Tybring, had been able to leave the Recreation Centre in order to attend his meeting.

**Argument:**

18. In argument on behalf of the Employer Mr. Buchanan submitted that the issue is whether there was any cause for some level of discipline, some culpable behaviour, in that receiving a warning letter was generally accepted to be the lowest level for a formalized disciplinary response. He submitted that there may well be a credibility issue in that the grievor provided no documentation indicating that a cell phone call was made, or a text message left with Mr. Darby, and it nevertheless rested with her to have ensured that if she indeed needed to keep herself at the pool for acceptable reasons, her immediate superior, Mr. Darby, was notified and became part of the discussion. Further, it should be considered an admission against interest that the grievor at one point, through her union representative, at Level 3 of the grievance process, had been willing to accept a written warning. The critical point for the Employer is that the meeting scheduled for the morning of October 20 was not attended and there was no advice received by Mr. Darby ahead of time, which realistically could have been arranged had the grievor been applying herself to her responsibilities to either be there or communicate an acceptable reason for her non-attendance. She should have made more effort to comply with this obligation, which should have included bringing Mr. Darby into the picture immediately. It should be considered at least worthy of a warning letter.

19. In support, counsel cited the summary in Brown and Beatty *Canadian Labour Arbitration* (4<sup>th</sup> ed) where they point out that it is implicit in the requirement for one to give adequate notice of absence to provide a reasonable explanation, and failure to do so can justify the imposition of some disciplinary sanction. They also speak of the significance of their being a pattern, which the Employer asserts may will be the situation here, given the understood concern related by Ms. Boden in her testimony, although there was no first-hand testimony in that respect and no supporting documentation. Mr. Buchanan addressed what the Employer sees to be “could haves”, such as switching off with Mr. Tybring, making more calls, making earlier calls, having gone over to the Town office at least briefly to explain the situation, and possibly enlisting other pool staff to cover for her. As it was, she missed the meeting, and Mr. Darby likely was not made aware she would not be in attendance. It was said to have been enough to justify the warning letter. Mr. Buchanan also submitted that weight should be given to the possibility that the grievor could well have simply concocted her entire version about attempts at contacting Mr. Darby.

20. In argument, Mr. Penner on behalf of the Union submitted, as was the Union’s opening position, that there was no culpable behaviour shown to have occurred. It was said not to have been proven on balance given the entirety of the circumstances apparent on the morning of October 20, 2017. It should not be missed that much of the evidence entered in support of the warning letter was of the hearsay variety. There is no real evidence of any past verbal warnings, nor any testimony from Mr. Darby that he did not receive any message, whether by text or verbal messaging left on his cell phone, possibly both, or from Mr. Tybring having seen him that morning. His main complaint, apparently, was that she did not attend the meeting, and he may have disagreed with what he was hearing about it, then or later, thinking her reason to be either contrived or insufficient. In all, it still

required him to have a better understanding of the situation before invoking discipline.

21. The Union relies on the grievor's uncontradicted testimony about her attempts at advising Mr. Darby. The uncontradicted evidence, in all, should reveal that she did what was reasonable to try to advise him about the situation keeping her at the pool that morning. She was not in a position prior to their scheduled meeting to have taken the time to go over and discuss the situation with him at the Town office, having left a message on his cell phone, and expecting that Mr. Tybring would communicate her problem as he indicated he would. Mr. Darby did not testify as to what he knew about her not being able to attend the meeting. Nevertheless, on the evidence presented there was deliberate neglect by the grievor of her employee obligation to advise and accordingly no wrongdoing to be identified as culpable behaviour. By her uncontradicted testimony the meeting was able to be arranged for the next working day and led to her submitting her budget proposals at that time covering the pool operations. There is no doubt that the Town Council had approved the budgetary requirements for the upcoming year. Further, it was irrelevant whether the Union had made a settlement offer prior to arbitration, it having been rejected.

**Conclusion:**

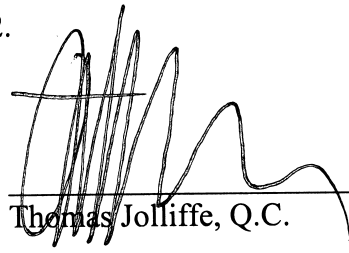
22. After having reviewed the evidence and argument presented, the issue is firstly whether there was a culpable act and were that found to have occurred, then secondly was the warning letter appropriate? In my view, deciding this grievance does not get beyond the first level examination in that I do not conclude there was any culpable act proven on the evidence. Ms. Boden, the Employer's only witness in this matter, has no first-hand knowledge about what occurred. The offended management person in question, Mr. Darby, did not testify. The grievor's version about what

occurred, while ably challenged by Mr. Buchanan during her cross-examination, remains uncontradicted. It is apparent that there was no investigative interview held following the missed meeting, and the grievor made no admission pertaining to the facts of the matter at any point which could be of assistance to the Employer in proving its case at arbitration. The Union, in consultation with the grievor, may well have been willing to accept a warning letter on her personal file, but in my view is not determinative of the issue of wrongdoing at this point. Settlement offers are made for any number of reasons including wanting to avoid the time-consuming and expensive last step of an arbitration hearing. The allegation of wrongful behaviour needs to be proved on the evidence, and certainly the hearing proceeded on the basis that the Union was denying any culpability resting with the grievor, which was likewise her position at hearing.

23. As I review the factual circumstances, it would seem entirely likely there was an emergent situation occurring that same morning, October 20, 2017, at the pool complex which needed to be attended to by the grievor as realistically coming within her pool responsibilities, certainly there being no evidence to the contrary. All in all, by reference to the only description concerning the significance of the chlorine issue, having come from the grievor and being uncontradicted, I accept her version that fulfilling her supervisor's responsibilities meant staying at the pool and monitoring the situation, meaning that she realistically was not able to attend the meeting. By her uncontradicted evidence she made efforts to contact her superior, Mr. Darby, and without any non-hearsay evidence to the contrary I do not conclude that she failed in her duty to reasonably attempt to notify him. Her uncontradicted evidence is also that her fellow supervisory level employee, Mr. Tybring, indicated that he would advise Mr. Darby upon arriving at the Town office. This does not mean that he actually fulfilled what he told her, but at least it was her understanding.

24. Accepting the grievor's version, as I do, I conclude that the case against her for some level of misconduct arising from the situation occurring on the morning of October 20, 2017, her alleged wrongful actions pertaining to missing the scheduled meeting, have not been proven. The grievance succeeds, there being no finding of culpability to any degree. Accordingly, the warning letter placed on the grievor's file was without cause, and all reference to it should be removed. I remain seized pending implementation and in the event any further directions are required.

DATED at Calgary, Alberta, this <sup>th</sup>6 day of Alberta, 2022.



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Thomas Jolliffe, Q.C.