

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 5014

Heard in Montreal, March 12, 2024

Concerning

CANADIAN NATIONAL RAILWAY

And

**TEAMSTERS CANADA RAIL CONFERENCE
RAIL TRAFFIC CONTROLLERS**

DISPUTE:

Denial of Rail Traffic Controller Chantel Koetzle's religious exemption rights. RTC Koetzle has sincerely held religious beliefs which required exemption from the Covid vaccination mandate, however she was not granted an exemption from CN, and was instead placed on unpaid leave.

JOINT STATEMENT OF ISSUE:

On August 13, 2021, the Government of Canada announced its intent to require COVID-19 vaccination for employees in the federally regulated air, rail, and marine transportation sectors and its travelers.

On September 8, 2021, CN President and Chief Executive Officer, JJ Ruest sent a message to employees stating: "Effective November 1, 2021, we will require all CN employees in Canada to be fully vaccinated against COVID-19 as a condition of employment..."

A Ministerial Order dated October 29, 2021, required certain railways, including the Company, to implement a company-wide vaccination policy mandating every employee to be vaccinated unless subject to an exception (on medical or religious grounds). Transport Canada also issued guidance for the assessment of requests to be exempt from the requirement to be vaccinated against COVID-19, including on religious grounds. On or around November 13, 2021, CN introduced its Mandatory COVID-19 Employee Vaccination Policy – Canada, which defines a process for the consideration of religious accommodation requests.

Both the Ministerial Order and the Policy provided that non-exempt employees who have not received their first dose as of November 15, 2021, or were not fully vaccinated as of January 24, 2022, will be subject to leave without pay as the minimum sanction.

On or around September 24, 2021, the Grievor submitted a Religious Exception Request Form. The Grievor's request was denied and the Grievor was placed on an unpaid administrative leave, effective November 15, 2021.

On or around June 17, 2022, the Director of Railway Safety issued "Order pursuant to Section 32.01 of the Railway Safety Act (MO 22-02) Order Ending Vaccination Mandates for Passengers and Employees", which effectively repealed the Ministerial Order as of June 20, 2022.

In anticipation of this occurring, on or around June 15, 2022, the Company advised the Grievor and any other affected employees that it was suspending its vaccine mandate and ending their unpaid leaves of absence. The Grievor returned to work on or around July 5, 2022.

Union's Position:

The Union contends that due to their sincerely held religious beliefs, RTC Koetzle should have been granted an exemption to the COVID mandate.

RTC Koetzle did not request an exemption because their belief precluded vaccination, but rather with the aborted fetal cell usage. That belief does not have to be shared or in conformity with a church, organization, leader or group - yet those beliefs are still valid and protected. CN chose to ignore all of this and denied RTC Koetzle her rights, causing significant financial harm. The Union requests that RTC Koetzle be made whole for all losses with interest for the time they were forced onto unpaid leave until their return to work.

Company's Position:

The Company's Mandatory COVID-19 Employee Vaccination Policy – Canada was required under the Ministerial Order and was consistent with the same as well as the Transport Canada guidance and is otherwise reasonable in the context of a global pandemic.

The Grievor's request was carefully considered by the Company and denied on the basis that they failed to establish that they had a sincerely held religious belief which prevented them from receiving the COVID-19 vaccine. The Grievor was placed on an unpaid administrative leave, effective November 15, 2021, which was not disciplinary in nature.

The Company disagrees with the Union's assertions and disputes the grievance. The Company maintains that the decision to deny the Grievor's request for religious exemption and to temporarily place the Grievor on an unpaid leave did not violate any legislation and reflects a reasonable exercise of management's rights.

FOR THE UNION:

(SGD.) J. Bailey

General Chairperson, RTC

FOR THE COMPANY:

(SGD.) R.K. Singh for J. Girard

Chief Human Resources Officer

There appeared on behalf of the Company:

R. Singh	– Manager Labour Relations, Vancouver
S. Fusco	– Senior Manager Labour Relations, Winnipeg
A. Hernandez-Gutierrez	– Labour Relations, Associate, Edmonton

And on behalf of the Union:

E. Carr	– Counsel, Caley Wray, Toronto
J. Bailey	– General Chairperson, RTC, Edmonton
P. Masson	– Local Chairperson, RTC, Edmonton
J. Rushton	– Legislative Representative, Edmonton
M. Martinson	– Vice General Chairperson, Edmonton
K. James	– General Chairperson, Edmonton

AWARD OF THE ARBITRATOR

Context

1. This decision arises in the context of the Covid 19 global pandemic, in which millions of people died. Governments, companies, unions and employees were reacting as best they could, in a state of uncertainty, danger and high stress. Government and Company policies were introduced in attempts to control and overcome the pandemic, as set out in the JSI.

2. The Government policies have been found to be reasonable by the Courts (see USW Local 2008 v Attorney General of Canada 2022 QCCS 2455) while CN's policy in response to Transport Canada direction has been upheld by arbitrators (see Arbitrator Schmidt, CNR v United Steelworkers, Local 2004; Arbitrator Clarke, AH 815).

3. This matter involves an analysis of the application of the Company Policy to a claim for religious exemption, within the framework of an obligatory vaccine mandate for employees on the Railway.

Issue

A. Was it reasonable for the Company to refuse a religious exemption to the grievor, resulting in a forced unpaid leave of absence?

Preliminary Objection

4. There was an initial objection to a new statement by the grievor (see Tab 2, Union documents) and submissions based on it. The new statement had only been submitted as part of the Union brief, shortly prior to the arbitration. After discussions, the objection was limited to 5 paragraphs, or portions thereof, of the statement and the arguments based thereon (paragraphs 3, 6, 7, 9 and 17).

5. For the reasons that follow, there is no need to rule on the objection, as a decision can be made on the basis of the existing statement and the uncontested arguments set out in the Union brief.

6. While no objection was made by the Union, I note that there are multiple documents in the Company brief which were introduced for the first time with the Company brief (see Tabs 42-45, various articles concerning fetal cell lines).

7. While the CROA system has undoubted benefits, this matter highlights one of its limitations, as it is very difficult to submit new material.

A. Was it reasonable for the Company to refuse a religious exemption to the grievor, resulting in a forced unpaid leave of absence?

Position of the Parties

8. The Company argues that it was bound by the Government order to have employees demonstrate proof of vaccine, in the absence of proof of one of the vaccine exemptions, either medical or religious.

9. Here, the grievor filled out the form modeled on the one provided by Transport Canada to claim a religious exemption. An internal committee reviewed each claim, and in the case of the grievor, determined that she had not established a sincerely held, creed-based belief, which prevented her from taking the vaccine.

10. Accordingly, her exemption was refused, but her unpaid leave was approved. She was reinstated as soon as the Ministerial Directive was removed.

11. The Union argues that the grievor has established that she has a sincere belief that taking the vaccine would violate her religious beliefs, practices and observances. It argues that she has met her prima facie burden of proof.

Analysis and decision

12. The Company Mandatory Covid-19 Employee Vaccination Policy-Canada (see Tab 9, Company documents) sets out at paragraph I requirements for a CN employee to obtain an exemption:

I. Exemptions and Accommodations

CN recognizes its responsibilities and duties under the Canadian Human Rights Act.

These responsibilities and duties must be balanced against and applied in a manner that respects CN's obligations to protect the health and safety of its employees and customers, and the various current and evolving requirements of the Federal government and Transport Canada's requirements, including the requirements set forth in the Ministerial Order.

Due to the serious health threat that COVID-19 continues to present, only limited categories of exemptions based on human rights grounds are recognized and permitted under the Federal government and Transport Canada's guidance and requirements, and specifically under the Ministerial Order. These exceptions are for medical contraindications and for sincerely-held religious beliefs only (the "Permitted Exceptions"). This Policy follows such guidance and requirements.

Accordingly, if a CN Employee will not be vaccinated against COVID-19 and wishes to obtain an accommodation and exemption from the vaccination requirement provided for in this Policy, then they must explicitly request an exemption in accordance with the conditions and timelines set forth in this Policy. Only exemptions based on a Permitted Exception will be granted and this, only where the applicable conditions are met.

A CN Employee who requests an exemption from the vaccination requirement under this Policy must submit a written request to CN, with supporting documentation, where applicable, in accordance with the process set out below. This documentation must be provided before November 15, 2021 (unless that CN Employee is currently on leave). Requests for exemption and accommodation will be considered on a case-by-case basis.

1. A CN Employee who seeks an exemption is required to complete the COVID-19 Vaccination Accommodation/Exemption Request Form appended to this Policy provided by CN.

2. The CN Employee must provide the completed Accommodation/Exemption Request Form to ohs_vaccination@cn.ca for medical exemptions and to

hr_vaccination@cn.ca for religious exemptions, with supporting documentation, where applicable.

3. OHS/HR will consult with CN administration and other appropriate personnel to determine whether the exemption meets the applicable requirements outlined in the Ministerial Order.

4. OHS/HR will confirm receipt of the Accommodation/Exemption Request Form. An original copy of the Form will be securely stored at CN.

Where a CN employee's circumstances satisfy the criteria for an exemption, resulting reasonable accommodations will be explored and granted up to the point of undue hardship in accordance with applicable Human Rights legislation.

13. The Religious Exception Request Form from Transport Canada is set out at Tab 9, pp. 96-98. It notes that: “The employer evaluating this request must do so in accordance with its legal duty to accommodate under the applicable legislation” and further notes that it is an offence under the Criminal Code to make a false statement under oath.

14. The Company Form filled out by the grievor reads as follows:

“Management reserves its right to request additional information in support of your request for an accommodation, and will comply with all applicable laws in determining whether it is able to accommodate your request without undue hardship to the Company.

By signing below, I hereby certify that the statements and information provided above and in furtherance of my request for accommodation based on my sincerely held religious belief, practice, or observance are true and accurate. I understand that any intentional misrepresentation contained in this request may result in disciplinary action up to and including termination of employment.”

15. The Affidavit signed by the grievor reads as follows:

Affidavit

Dear HR Officer,

On September 8th 2021, I and other employees of Canadian National Railway Company were notified that all employees must be fully vaccinated against COVID-19 and provide proof thereof or face termination of our employment. This letter will serve as my final notice to Canadian National Railway Company of the following:

Receiving the COVID-19 vaccination would violate my sincerely-held religious beliefs, practices and/or observances. I am a Christian who believes in the Bible, including the teachings in the New Testament. I have a Christian worldview. This perspective recognizes that faith and conscience compel an individual to submit to the proper jurisdiction within the rule of law, in this case, Divine Law.

I am objecting to these vaccines because I believe in and follow God, the principles laid out in His Word and I have a deeply held belief that these vaccines violate them. I believe my body is a temple for the Holy Spirit. I also believe all life is sacred and that God created us in his image.

Specifically, the New Testament teaches that:

"Know ye not that ye are the temple of God, and that the Spirit of God dwelleth in you? If any man defile the temple of God, him shall God destroy; for the temple of God is holy, which temple ye are...What? Know ye not that your body is the temple of the Holy Ghost which is in you, which ye have of God, and ye are not your own?" 1 Corinthians 3:16-17, 6:19 (KJV).

Accordingly I believe, pursuant to my Christian faith, that my body is a temple of the Holy Spirit. It is a God-given responsibility and requirement for me to protect the physical integrity of my Body against unclean food and injections.

These vaccines contain carcinogens, neurotoxins, cytotoxins, genotoxins and other hazardous substances that are proven harmful to the human body. It is of vital importance to mention that all of the available COVID-19 vaccines were developed and manufactured using cell lines from aborted fetuses. Pfizer, Moderna & AstraZeneca utilize "HEK-293", while J&J utilize "Per.C6". Any vaccine that uses cell lines originating from aborted fetuses are morally compromised.

The acceptance of these vaccines promotes abortion and violates the Sixth Commandment of "Thou Shall Not Kill". Christians are required to honor the sanctity of human life, including pre-natal human life and therefore protect unborn children from medical experimentation in the production of some vaccines. (Gen 1:27; Gen 9:6; Ps. 139:13-16).

The mandated vaccine, with its numerous additives and its mechanism for altering my body, is the equivalent of a prohibited "unclean food" that causes harm to my conscience. These vaccines to me are unclean and are morally corrupt. I believe in and follow God and the principles

laid out in His Word and I have a deeply held belief that these vaccines violate them.

Having formally notified Canadian National Railway Company of the conflict between the COVID-19 vaccination requirement and my religious beliefs, I look forward to receiving in a prompt and timely manner acceptance of my exemption. Failing that, I reserve my right to pursue legal remedies available to me with the Human Rights Commission or otherwise in accordance with established laws.

I make this request for the glory of God and consistent with my faith. Thank you for your consideration of it.
Subscribed and sworn, without prejudice, and with all rights reserved,
Signed: Chantal Koetzle Dated: September 24, 2021.

16. The requirement that all CN employees would need to become vaccinated was announced on September 8, 2021. The grievor submitted her request for an exemption on September 24 and was refused in an undated communication on the following basis:

“To: Chantal Koetzle

Thank you for your submission, Mrs. Koetzle. Having reviewed it carefully, we are denying your request for religious accommodation. You have provided us with an affidavit that establishes that you are “a christian who believes in the bible, including the New Testament”, however you have failed to establish that you have a faith- based practice or belief that precludes vaccination.

It appears to us that you have made a personal choice not be vaccinated and this is not a choice we are required to accommodate.

We encourage you to be vaccinated without any further delay.”

17. Although it is undated, the refusal had to have occurred prior to October 20, the date on which the Step 2 grievance was filed (see Tab 23, Company documents).

18. The grievor was placed on unpaid leave, effective November 15, 2021 (see Tab 22, Company documents).

19. The leading case on freedom of religion, cited by both Parties, is that of Northcrest Union v Amselem, 2004 SCC 47. There, the Supreme Court of Canada found as follows:

...(1) he or she has a practice or belief, having a nexus with religion **which calls for a particular line of conduct**, either by being

objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual's spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials; and (2) he or she is sincere in his or her belief. [emphasis added]

20. Much of the arbitral and human rights jurisprudence which follows involves an examination of the Anselm factors. Depending on the results of this examination, the religious exemption was either granted or denied.

21. The Company cites Pelletier v 1226309 Alberta Ltd, 2021 AHRC 192, concerning the sufficiency of the information required:

*... an individual must do more than identify a particular belief, claim that it is sincerely held, and claim that it is religious in nature. This is not sufficient to assert discrimination under the Act. **They must provide a sufficient objective basis to establish that the belief is a tenet of a religious faith (whether or not it is widely adopted by others of the faith), and that it is a fundamental or important part of expressing that faith.** [Emphasis added]*

22. The Company also cite Nova Scotia Union of Public and Private Employees, Local 13 v Halifax Regional Municipality, NSUPE Gr. 13-01-2022, in which Arbitrator Poirier found as follows:

*Based on the guidance in Amselem, “**only beliefs, convictions and practices rooted in religion, as opposed to those that are secular, socially based or conscientiously held, are protected by the guarantee of freedom of religion**” (paragraph 39). The evidence before me does not allow me to conclude that the grievor's belief regarding the vaccine has a nexus with religion as it is defined in Amselem. Her belief is personal and based on secular factors. **If the grievor decided that the available science justified her decision to get vaccinated, that decision would also be protected, according [to] her beliefs. Indeed, based on the evidence before me, anything the grievor sees fit to make a decision about would be protected by her freedom of religion, provided she is at peace about it.***

According to Amselem, religion “typically involves a particular and comprehensive system of faith and worship”. Religion also tends to involve the belief in a divine, superhuman or controlling power. In

*essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith. The only element of the grievor's beliefs regarding the vaccine that is connected to religion is her belief that the Holy Spirit lives within her and provides protection such that the vaccine would be unnecessary. **Her own testimony established that the consequence of this belief is that she does not have to take the vaccine. This is different from a belief that prevents a person from taking the vaccine. This belief led her to having a choice as to whether to take the vaccine. The choice she then made was based on secular factors connected to her understanding of the science related to the COVID vaccine.***
[Emphasis added]

23. The Company cites Arbitrator Hollett in Nova Scotia Nurses' Union and IWK Health Centre, 2022 Canlii 57410 (NSLA) about the grievor's concerns about the ingredients in Covid-19 vaccines:

"Does not support necessary findings that these beliefs meant [he] was unable to take any kind of COVID-19 vaccine ... and that a policy requiring [him] to do so constitutes substantial interference with these beliefs".

24. Finally, the Company refers to AH 815, where Arbitrator Clarke found as follows:

"On a balance of probabilities, the arbitrator concludes that Mr. Koetsier did not have a sincerely held religious belief in November 2021. The lack of any evidence about his "current religious practices" leads to this conclusion. On the facts, Mr. Koetsier's submission of the VNOL, without any reference to religion, as well as his comments to CN after the refusal to grant a religious exemption, indicate his concerns remained grounded in the alleged inefficacy and safety of the covid vaccine."

25. The Union has cited a number of cases where arbitrators and adjudicators came to the opposite conclusion.

26. In Public Health Sudbury & Districts v Ontario Nurses' Association, 2022 CanLII 48440 (ON LA) (Tab 10, Union documents), Arbitrator Herman applied Amselem, and

found that a “subjectively engendered” personal connection with the divine or one’s spiritual faith triggers protections:

“The impact of this decision is that the grievor must demonstrate that she has a practice or belief, that has a nexus with her creed, that calls for a particular line of conduct, here the decision to not get vaccinated, “either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual’s spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials.” To meet the requirement that an applicant must establish a link between the conduct in question and his or her creed, the Court has therefore determined that a “subjectively engendered” personal connection with the divine or one’s spiritual faith is sufficient.” (para 44)

27. Arbitrator Herman went on to decide that sincerely held personal beliefs which prevent vaccination, where there is a nexus with the religion or creed, engender human rights protection:

48. Although the Roman Catholic Church leadership urges members to get vaccinated and has concluded that doing so would not be condonation of, cooperation with, or participation in abortion, as the Court stated in Amselem, the issue initially to be determined does not depend upon what religious leaders suggest or whether an individual’s actions are in conformity with the position of religious officials. What is required is a nexus with the religion or creed, a relationship with an overarching system of beliefs of the religion or creed. That is present here, for Latin Mass is opposed to abortion and contraception. The fact that the Latin Mass community takes the position that each member must as a matter of their own conscience determine whether getting vaccinated is condoning, cooperating with, or participating in abortion does not render the decision merely a preference or a singular belief, separate and apart from the overarching doctrine of the Latin Mass community. The individual decision about what one’s faith requires of a member to avoid condoning, cooperating with, or participating in abortion remains a decision about how a member interprets and applies their faith, and has a nexus to the individual’s creed.

49. That is not the end of the inquiry. There remains the question of whether the grievor’s refusal to get vaccinated is sincerely based upon or connected to her concern that her faith and her relationship with God would be harmed if she were to agree to get vaccinated, or whether her decision to refuse the vaccines is not in fact based upon reasons

related to her creed. As the Court said in paragraph 56 of Amselem, the issue is whether the grievor “is sincere in his or her belief”.

50. There can be multiple reasons for objecting to getting vaccinated, but as long as one of the reasons is sincerely and legitimately based upon one’s creed, as subjectively interpreted and applied, an applicant would be entitled to an exception under the Code and the vaccine policy itself.” (underlining added).

28. The Union cites Wilfrid Laurier University and UFCW 2022, CanLII 120371 (ON LA), in which Arbitrator Wright found that “a claimant does not need to establish that a religious belief is a required objective tenet of their faith to establish a prima facie case of discrimination based on creed” (Tab 11, Union documents, para 106).

29. It also cites Arbitrator McLean in City of Toronto v CUPE Local 79 (DeCastro):

“I also do not accept that there is any import to the fact that to get vaccinated is not a religious exercise. That is the very nature of adverse effect discrimination. Adverse effect discrimination in creed cases arise because an employer institutes a neutral rule or policy that has nothing to do with religion, but that rule or policy has an adverse effect on people of a particular religion, and/or people with particular religious practices or particular beliefs.”

Most importantly, I see nothing in the Amselem decision which supports the City’s argument. The decision is replete with references to “beliefs”. a. 39- In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual’s spiritual faith and integrally linked to one’s self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object Para of that spiritual faith. b. From Big M: The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. c. From Edward Books: The purpose of s. 2(a) is to ensure that society does not interfere with profoundly personal beliefs that govern one’s perception of oneself, humankind, nature, and, in some cases, a higher or different order of being. These beliefs, in turn, govern one’s conduct and practices. d. 43. The emphasis then is on personal choice of religious beliefs. In my opinion, these decisions and commentary should not be construed to imply that freedom of religion protects only those aspects of religious belief or conduct that are objectively recognized by religious experts as being obligatory tenets or precepts of a particular religion.

Consequently, claimants seeking to invoke freedom of religion should not need to prove the objective validity of their beliefs in that their beliefs are objectively recognized as valid by other members of the same religion, nor is such an inquiry appropriate for courts to make; see, e.g., *Re Funk and Manitoba Labour Board* (1976), 1976 CanLII 1098 (MB CA), 66 D.L.R. (3d) 35 (Man. C.A.), at pp. 37-38. In fact, this Court has indicated on several occasions that, if anything, a person must show “[s]incerity of belief” (Edwards Books, supra, at p. 735) and not that a particular belief is “valid”. (Tab 12, Union documents, paras 63, 66)

30. A similar analysis and conclusion was reached by the same arbitrator in *City of Toronto v CUPE Local 79 (Mounsey)* (Tab 13, Union documents).

31. Applying the above jurisprudence to the facts at hand, I am driven to the conclusion that the grievor has established, on a prima facie basis, that she has a sincerely held belief that taking the Covid-19 vaccine would be contrary to religious beliefs and endanger her relationship with the Devine.

32. Firstly, I find that the grievor was sincere:

a) The grievor applied for an exemption soon after the initial announcement of the vaccination requirement and contested the refusal, well before the requirement became effective on November 15, 2021;

b) The grievor signed a form which explicitly calls for the certification of the information provided, with disciplinary action, including termination of employment, being possible consequences for intentional misrepresentation;

c) The grievor signed an Affidavit concerning these beliefs, before a Notary Public;

d) The form seeks information about the following:

“Please identify your sincerely-held religious belief, practice, and/or observance that you believe conflicts with the Company’s vaccination mandate...

Please state how your particular sincerely-held religious belief, practice, and/or observance specifically conflicts with the Company’s vaccination mandate, and describe the accommodation that you are requesting...

By signing below, I hereby certify that the statements and information provided above and in furtherance of my request for accommodation

based on my sincerely held religious belief, practice, or observance are true and accurate....”

33. The Company, in its refusal, nonetheless accepted: “You have provided us with an affidavit that establishes that you are” a christian who believes in the bible, including the New Testament:...” (underlining added).

34. The refusal in no way questions her sincerity in applying for the exemption and signing the Affidavit.

35. The refusal concludes, however, that: “you have failed to establish that you have a faith-based practice or belief that precludes vaccination. It appears to us that you have made a personal choice not be vaccinated and this is not a choice we are required to accommodate.” (underlining added).

36. For the reasons that follow, I find that, contrary to the terms of the refusal, the grievor has made out at least a prima facie case that her vaccine refusal has a nexus with her religious beliefs. Her affidavit states the following:

“Receiving the Covid-19 vaccination would violate my sincerely held religious beliefs, practices and/or observances”...

“I am objecting to these vaccines because I believe in and follow God, the principles laid out in his Word and I have a deeply held belief that these vaccines violate them. I believe my body is a temple for the Holy Spirit. I also believe all life is sacred and that God created us in his image”...

“Accordingly I believe, pursuant to my Christian faith, that my body is a temple of the Holy Spirit. It is a God-given responsibility and requirement for me to protect the physical integrity of my Body against unclean food and injections”...

“It is of vital importance to mention that all of the available Covid-19 vaccines were developed and manufactured using cell lines from aborted fetuses...The acceptance of these vaccines promotes abortion and violates the Sixth Commandment of “Thou Shall Not Kill”....

“The mandated vaccine, with its numerous additives and its mechanism for altering my body, is the equivalent of a prohibited “unclean food” that causes harm to my conscience. These vaccines to me are unclean and are morally corrupt. I believe in and follow God

and the principles laid out in His Word and I have a deeply held belief that these vaccines violate them.”

37. The affidavit is replete with references to her religious beliefs, why she believes that vaccinations are “unclean” and how taking the vaccination would violate her obligation to treat her body “as a temple for the Holy Spirit”.

38. Although there are references to vaccinations causing harm to the human body, the primary focus is a religious belief, as set out above. As such, this case is much closer to the cases cited by the Union, than those referred to by the Company. The refusals in the cases cited by the Company are mostly based on concerns about the efficacy or safety of the vaccines, rather than whether they are contrary to the grievor’s religious belief.

39. Accordingly, I disagree with the reasons given in the refusal that the grievor did not establish that it was a “faith-based refusal that precludes vaccination” or that it was merely “a personal choice”. Her refusal, at least on a prima facie basis, has been established to be “faith-based” and not merely a “personal choice”.

40. Had the Company wished to challenge her reasons for refusing the vaccine, it should have sought further clarifications of her stated beliefs. It could have challenged the grievor that her stated beliefs were merely quotations from web sites and not her own beliefs. It could have challenged her views that all Covid-19 vaccines are based on fetal cell lines. If the clarifications had established that the grievor was not sincere or that her beliefs were not faith based, then the decision might well be similar to the cases cited by the Company. However, none of these challenges were made and we are left with understanding and interpreting the form and affidavit as they are.

41. Here no such further inquiry took place and her request was pretty summarily dismissed, for reasons that do not resist further examination. The Company is entitled to have concerns about her stated reasons; they are not entitled to dismiss the stated

reasons without putting these concerns to her and permitting her to attempt to address them. As none of this was done, the refusal must be overturned.

Conclusion

42. The grievor is to be reinstated for the period she was placed on unpaid leave, without loss of seniority. She is to receive compensation for wages and benefits lost, less mitigation, during this period.

43. I remain seized with respect to any questions of interpretation or application.



May 10, 2024

**JAMES CAMERON
ARBITRATOR**