

Arbitrator Rejects “Lowest-Cost Generic” Policy for Generic Substitutes in Collective Bargaining Agreement

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Can an employer limit drug plan reimbursement to only the lowest-cost generic version of a prescribed medication if the collective bargaining agreement only references “generic substitutes”? In *Hydro One Inc. v. The Society of United Workers* (2025 CanLII 29943 (ON LA)), Arbitrator John Stout held that Hydro One’s implementation of a “lowest-cost generic” reimbursement policy was inconsistent with the collective agreement.

Background

The Society filed a policy grievance after it learned that Hydro One’s claims administrator, Green Shield Canada (GSC), had been reimbursing certain prescription drugs only up to the cost of the lowest-priced generic alternative. This meant that employees had to pay the difference between the cost of the lowest-priced generic alternative and the cost of the higher-priced generic they purchased, even when the higher-priced generic had been prescribed by a physician. The grievance focused on whether Hydro One’s health and dental benefits plan, as set out in a brochure incorporated by reference into the collective agreement, permitted this form of cost containment.

The brochure stated: “*For all ‘brand name drugs’ that have a ‘generic substitute,’ only the ‘generic substitute’ will be fully reimbursed.*” According to GSC, limiting coverage to the lowest-cost generic equivalent was an “inherent feature” of a mandatory generics benefits plan.

However, neither the brochure nor the collective agreement specifically stated that the reimbursement was limited to the lowest-cost generic available. The Society argued that Hydro One had unilaterally imposed this reimbursement limitation, which had not been bargained between the parties.

Hydro One responded that the plan’s generic substitution requirement necessarily implied reimbursement based on the lowest-cost option, and that the administration of the plan by GSC was reasonable and consistent with industry practice.

The Decision

Cassels

Arbitrator Stout ruled in favour of the Society, finding that the plan's language did not support a lowest-cost limitation on reimbursement. He emphasized that the principle of "mandatory generic substitution" allows for reimbursement of any generic equivalent, not just the cheapest one. Arbitrator Stout held that introducing a "lowest cost" cap amounted to an unauthorized reduction in negotiated benefits and a violation of the collective agreement.

In reaching this conclusion, Arbitrator Stout applied settled principles of collective agreement interpretation, including that the words of an agreement must be given their plain and ordinary meaning read in the context of the agreement as a whole, and that ambiguities should not be interpreted to reduce bargained benefits. Furthermore, monetary entitlements should be clearly outlined in any collective agreement. Arbitrator Stout also observed that the brochure promised full reimbursement for generic substitutes; nowhere did it stipulate that reimbursement would be based on the lowest-cost generic alternative. Arbitrator Stout further rejected Hydro One's argument that cost control practices are common in the industry and could justify a departure from the text of the agreement.

Arbitrator Stout directed Hydro One to instruct GSC to reimburse employees for any prescribed generic drug, regardless of whether it was the lowest-cost option. In addition, Arbitrator Stout ordered Hydro One to retroactively compensate affected members of the Society who were not reimbursed the full cost of a generic substitute.

Key Takeaways

This decision provides important guidance when bargaining with respect to group health and dental benefits. Specifically, any intended limitations on benefit coverage should be expressly outlined in collective agreements. When a collective agreement addresses a specific benefit and includes limitations on such benefit, then any further limitation found in the benefit plan documents must be brought to the union's attention. Moreover, benefit plan administrators cannot implement cost control practices that are not expressly permitted under the terms of a collective agreement, even if such practices are common in a particular industry. Finally, employers should ensure that benefit plan administration practices align with the collective bargaining agreement and seek to negotiate any changes they wish to introduce.

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