

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

CASE NO.4871-Supplemental

Heard in Montreal, March 13, 2024

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The mitigation to be deducted from the compensation owed to Mr. SK (“the Grievor”) following CROA 4871.

JOINT STATEMENT OF ISSUE:

On October 17, 2023, the parties presented their positions regarding the Grievor’s accommodation file.

Arbitrator Cameron issued award CROA 4871 on November 21, 2023, which outlined the following:

30. *I also find that the Company failed in its responsibility to actively consider alternative non safety critical, non-safety sensitive work, which the grievor was able to perform. As such, it bears responsibility for a portion of the lost compensation.*
31. *Accordingly, for the period between July 22, 2021 and May 5, 2023, mitigation should be deducted. For the balance, I award 50% of the lost compensation to the grievor.*
32. *Given that each side bears responsibility for the losses suffered, I do not consider that this is a case for an award of damages.*
33. *To this extent, the grievance is upheld.*
34. *I remain seized for all matters concerning interpretation or application of this Award.*

The parties were able to reach agreement on the amount of compensation owed to the Grievor, with the exception of the mitigation to be deducted. As the Arbitrator remains seized, the parties request for a determination on the mitigation to be deducted.

UNION’S POSITION:

The Union’s position is that while the Company did not provide any accommodation for Mr. SK, he took it upon himself to use this time to better himself and attend school. At all times when he was required by CP he made himself available and upon the Company finally accommodating him in 2023 Mr. SK stopped his studies and return to CP as requested. Had CP not failed its’ responsibility to accommodated Mr. SK he would not have been in school but working at his accommodation.

The Union request that the period of times that Mr. SK was in school and/or awaiting school to start, be used as mitigation in this case and that the Company's requested 40% mitigation application not be shown as appropriate.

COMPANY'S POSITION:

The Company disagrees and denies the Union's request.

The Company submits that the Grievor has not provided any evidence of mitigation from July 21, 2021 to May 5, 2023.

The Grievor returned to school and attended full-time studies from February 21, 2022 to November 25, 2022 and started a full-time apprenticeship on January 6, 2023. A return to school does not satisfy the duty to mitigate unless the employee remains available for work and is actively pursuing alternative employment.

As the Grievor did not apply for any alternative employment, the Company's position is that the Grievor has not demonstrated they took sufficient steps to gain employment and mitigate their loss of income. As a result, an application of 40% mitigation should be deducted from the compensation owed to the Grievor following CROA 4871 consistent with CROA jurisprudence.

Based on the aforementioned reasons, the Company respectfully submits that the Arbitrator be drawn to the same conclusion and find that the Company's application of 40% mitigation is appropriate.

FOR THE UNION:
(SGD.) W. Apsey

General Chairperson, CTY-E

FOR THE COMPANY:
(SGD.) F. Billings

Asst. Director, Labour Relations

There appeared on behalf of the Company:

F. Billings	– Manager Labour Relations, Calgary
D. Zurbuchen	– Manager Labour Relations, Calgary
S. Scott	– Director, Labour Relations, Calgary

And on behalf of the Union:

R. Whillans	– Counsel, Caley Wray, Toronto
W. Apsey	– General Chairperson, CTY-E, Smiths' Falls
D. Psychogios	– Senior Vice General Chairperson, CTY-E, Montreal
SK	– Grievor

AWARD OF THE ARBITRATOR

1. The Parties have asked for a rectification and a clarification of an earlier Award.
2. Firstly, the Union seeks a rectification of the Award to reflect that no damages had been sought by the Union. Accordingly, the second sentence in paragraph 27 and paragraph 32 are deleted.
3. Secondly, both Parties sought clarification with respect to the calculation of compensation.

4. In the initial Award, I had written the following:

29. Here, I find that the grievor was not as diligent as he should have been with respect to providing the requested medical information concerning his sleep apnea. As such, he bears responsibility for a portion of the lost compensation.


30. I also find that the Company failed in its responsibility to actively consider alternative non-safety critical, non-safety sensitive work, which the grievor was able to perform. As such, it bears responsibility for a portion of the lost compensation.

31. Accordingly, for the period between July 22, 2021 and May 5, 2023, mitigation should be deducted. For the balance, I award 50% of the lost compensation to the grievor.

5. My intention was that any monies earned during the period be deducted from the total compensation which would have been earned between July 22, 2021 and May 5, 2023. The grievor would then be entitled to 50% of this new amount.

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

May 22, 2024



JAMES CAMERON
ARBITRATOR