CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5166

Heard in Calgary, April 10, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the Employment File closure of Conductor Toby Miner ("the Grievor") of Kenora, ON

JOINT STATEMENT OF ISSUE:

On June 14, 2023, by means of a letter the Company notified Mr. Miner of the intent to close his employment file effective July 17, 2023.

On July 13, 2023, Mr. Miner received a letter with the explanation:

In the letter dated June 14, 2023, you were advised of the company's intent to close your employment record. You were asked to provide any new information that may cause us to reconsider our decision prior to July 13, 2023. To date we have not received any new information from you.

Please be advised that your employment record has been closed effective July 13, 2023.

Union Position

For all the reasons and submissions set forth in the Union's grievances, which are herein adopted, the following outlines our position.

The Company has vastly expanded its position on why Mr. Miners's file was closed. Within the Step Two response the Company has taken the position that they are unable to accommodate Mr. Miner in Kenora and the allegation that he is unwilling to relocate. The Company mentions that Mr. Miner is receiving WSIB to insinuate that this relieves the Company of their duty to accommodate. None of these positions were previously adopted with the close letters sent to Mr. Miner and these expansions of argument prejudice the Union's ability to properly respond. Accordingly, the Union objects to these late expansions of argument.

The Union's request that the Company provide full disclosure of all documentation in relation to Mr. Miner continues to go unanswered. The failure to fulfill this requirement prejudices the Union's position.

The Union contends that the Company failed to provide Mr. Miner with a fair and impartial investigation under the requirements of the Collective Agreement. The Company has failed to meet the burden of proof required to close Mr. Miner's employment file and the absenteeism is innocent. Closing Mr. Miner's file was discriminatory, arbitrary, unwarranted, unjustified and excessive. The Company has failed to provide reasoning how granting Mr. Miner the additional time required to see his physician would have been prejudicial to the Company.

The Company's actions are in violation of the Canadian Human Rights Act, Canada Labour Code, Duty to Accommodate, recent jurisprudence, the legal obligation to accommodate

an employee, and Article 36 of the Collective Agreement. The employer has a legal obligation to accommodate disabled workers to the point of undue hardship. In that respect, the onus falls upon the Company to demonstrate that the burden has been met. The Company has failed in its duty to accommodate Mr. Miner and has otherwise not been reasonable in the handling of this employee and has not demonstrated any undue hardship by not properly accommodating him.

The Company has failed to comply with its own policy 1501 Workplace Accommodation, and previous incarnations of this policy.

The Union requests that the Company reinstate Mr. Miner without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. Furthermore, the Company provide a suitable accommodation until Mr. Miner can return to his Conductor position. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

Company Position

For all the reasons and submissions set forth in the Company's grievance replies, which are herein adopted, the following outlines our position.

The Company disagrees and denies the Union's request.

The Company disagrees with the Union's allegation that the Company has expanded its position. The Company in following the grievance procedure provided its grievance response so that the Union could understand the Company's decision. Furthermore,
should the arbitrator accept the Union's position then the Union would be prohibited from adding any more information at subsequent steps of the grievance process.

With respect to the Union's claim of the Company's failure to provide disclosure, the Company provided the Health Services (HS) File and is working to provide the Disability Management (DM) File. Moreover, materials that will be relied upon will be provided in advance. It is unclear the prejudice that the Union has allegedly suffered.

The Company maintains given the facts of Mr. Miner's case, it is not in violation of Article 36 of the collective agreement, the Canadian Human Rights Act (CHRA), the Canada Labour Code (CLC), nor Policy 1501, given his permanent restrictions and unwillingness to relocate. This has unfortunately left the Company at a point of undue hardship in its duty to accommodate.

Company records include the following facts with respect to Mr. Miner's employment file closure:

- Mr. Miner sustained a work-related back injury on March 8, 2016.
- He had surgery for his low back on February 1, 2017 and as per WSIB, he had permanent restrictions as of September 14, 2018.
- Mr. Miner was provided temporary, modified work from August 9, 2018 to November 6, 2018 and again from January 15, 2019 until May 29, 2020. At this point, the Company was unable to accommodate Mr. Miner on a permanent basis in Kenora, Ontario and he was also unwilling to relocate.
- The most recent FAF confirms that Mr. Miner has permanent restrictions, which the Company is unable to accommodate at his current location.
- WSIB referred Mr. Miner to vocational services for re-employment assistance and he is currently in receipt of benefits from WSIB until he turns 65 years old.

For these reasons, the Company maintains that it reached the point of undue hardship
and that the Grievor's employment record was appropriately closed.

The Company requests that the Arbitrator be drawn to the same conclusion and dismiss the Union's grievance in its entirety.

For the Union:
(SGD.) D. Fulton
General Chairperson

For the Company:
(SGD.) F. Billings
Director, Labour Relations

There appeared on behalf of the Company:

A. Harrison	– Manager, Labour Relations, Calgary
S. Scott	– Manager, Labour Relations, Calgary
S. Arriaga	– Manager Labour Relations, Calgary
J. Leedahl	– TrainMaster, Saskatoon

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
B. Wiszniak	– Vice General Chairperson, CTY-W, Regina
B. Myre	– Vice General Chairperson, LE-W, Red Deer
J. Rousseau	– Local Chairperson Division 535, Kenora
T. Miner	– Grievor, Kenora

AWARD OF THE ARBITRATOR

Introduction

[1] The Grievor was hired in October of 2007. As of the date of the events in this Grievance, the Grievor had been working out of Kenora, Ontario.

[2] On March 16, 2016 the Grievor sustained a back injury while detraining, which ultimately required Decompression/Fusion surgery. He has been left with permanent restrictions and was unable to continue his previous work with the Company, as a Conductor.

[3] The Grievor eventually became able to perform non-safety sensitive sedentary work. The Grievor was accommodated with project work for the Company's Billable Assets Project on August 9, 2018 to November 6, 2018; and again on January 15, 2019 to May 29, 2020.

[4] Other than during that period, the Grievor has not performed any work for the Company between his injury and his file closure in July of 2023.

[5] The Company closed the Grievor's employment file, effective July 16, 2023, although the Company did review a Safety Critical Functional Abilities form received August 3, 2023.

[6] This Grievance was filed against that file closure.

Issue & Summary

[7] The issue raised by this Grievance is whether the Company has met its duty to accommodate the Grievor and – if so – whether the Grievor's file closure was appropriate.

[8] For the reasons which follow, and after careful review of the extensive evidence filed into this proceeding, I am satisfied the Company's obligation to accommodate the Grievor was discharged by June of 2020.

[9] Even if that were not the case, by the Fall of 2020, the Grievor had decided to retrain with the WSIB program, ultimately retraining as a Retail Salesperson. That choice would also have satisfied the Company's accommodation obligations, had those obligations not already ended.

[10] The Grievance is dismissed.

[11] The Company was entitled to close the Grievor's employment file in July of 2023.

Facts

[12] It is not disputed that the Kenora Terminal is a small Terminal in the Company's operations.

[13] Given the nature of the Company's business, its undisputed evidence was that sedentary administrative type of work accommodations – which were what the Grievor required due to his permanent restrictions - are located in its larger centres, such as Calgary and Winnipeg.

[14] The Company filed evidence that in December of 2018, it was aware that the Grievor was unwilling to relocate from Kenora, Ontario to be accommodated: email December 11, 2018.

[15] On July 15, 2019, the Company sent the Grievor a list of open positions "*just in case there is a permanent position that you are interested in*". The Grievor's response on July 23, 2019 was "*I looked at your list there isn't much for Kenora area that accommodates restrictions. Thank you*."

[16] I am satisfied it was reasonable for the Company to determine from its communication that the Grievor remained unwilling to move away from Kenora in order to be accommodated. The Company found temporary accommodated work for the Grievor in Kenora for a period of time in late 2018 and 2019 to mid 2020.

[17] When the Grievor's project work ended in May of 2020 due to the slowing volume of that work, a Teams Meeting was held. The evidence filed by the Company was that the Grievor was informed in that meeting that the "*NSSP*" (non-safety sensitive positions) which were available in the Company were "*office type positions*", which were either in "*Winnipeg or Calgary*".

[18] He was specifically asked "*if he was willing to relocate*".

[19] In that meeting, the Grievor again expressed to the Company that he did not want to be accommodated outside of Kenora, Ontario "*because his wife has a good job*".

[20] The Union does not dispute that the Grievor made that statement.

[21] I am also satisfied the Grievor expressed his interest in working remotely, as he had done for his accommodated position. He was told that there was "*nothing that would allow him to work remotely from a small terminal*".

[22] The Grievor also asked about his pay and became upset when he was told he would only be receiving his WSIB partial loss of earnings amount. He was told on several occasions in that conversation, however, that it would be a "*WSIB decision*" what he would receive. He was told the Company would continue to look for jobs for which he was suited, and encouraged him to look, *and to tell the Company if he saw any position he was interested in.*

[23] He was specifically told to let Disability Management know if he applied for anything as they would then "*work on their end with the hiring manager*". The "*action plan*" from the meeting was that the Company would continue to look for a "*suitable accommodation*".

[24] That same day the Grievor sent an email and asked if there was anything he could do to retrain to "*take on other jobs at CP*" or "*schooling to take on other jobs in this company*".

[25] However, moving from Kenora was not one of the steps he was willing to take.

[26] On June 5, 2020, several days after the May Teams meeting, the Company sent to the Grievor "*a list of open positions*", which were stated to be sent "*just in case there is a permanent position that you are interested in*".

[27] He was also asked to let the Company know if he wanted to apply to any of those positions.

[28] The Company specifically brought to the Grievor's attention in that email that there was a "*Coordinator Support Services Position*" in Winnipeg which would be "*a good opportunity for anyone looking for a permanent role in a sedentary NSSP position*". I am satisfied the Company was seeking out whether the Grievor was even interested in that role, given that it would require him to leave Kenora.

[29] That was not unreasonable, given his resistance in moving, up to that date. While the Grievor had just told the Company that he didn't want to relocate, the Company was attempting to shift him from that position, to find a sedentary position for him.

[30] Ms. Lehfellner also asked him to *"[p]lease send me the automatic reply if you do apply*". I am satisfied from my review of the evidence that the reason she made this

request – which was also communicated to the Grievor in the May meeting - was so that she could discuss the Grievor's situation with the hiring manager and arrange for that accommodation, if that position interested the Grievor.

[31] That discussion would have been part of the employer's obligation in accommodating the Grievor.

[32] The Grievor *did* apply for that position, but failed to advise Ms. Lehfellner he had done so.

[33] At some point prior to late August of 2020, the Company became aware the Grievor *had* applied for that position, but had ***not*** advised Ms. Lehfellner of that application as she requested, he do. The evidence was the Company told the Grievor on August 24, 2020 that had they known he was interested in that position, the Company would have "*followed up*" and "educated *the hiring manager on the benefits of hiring*" an accommodated employee. The Grievor was also told to advise the Company in the Teams meeting in May of 2020.

[34] As the Grievor did not do so, Disability Management was unable to discuss the issue of accommodation with the hiring manager for that role, to accommodate the Grievor in that role.

[35] On August 27, 2020, the Company again sent the Grievor a list of the current open positions.

[36] It is relevant that again the Grievor responded (on August 28, 2020) with the question "*Can any of these be done from Kenora?*". The Company Official answered "*not that I'm aware of*".

[37] It is relevant the Grievor never provided a response of whether he was – or was not – interested in any of the open positions, which the Company could then pursue on his behalf and intercede with the hiring managers. In particular, he never suggested to the Company that he was willing to move from Kenora to obtain accommodation and remain with the Company.

[38] While the Union argued the Company's assessment that the Grievor could not drive passengers was in error, having reviewed the evidence, there was no evidence the Company disqualified the Grievor from such positions in error or that such positions even existed in the small Terminal of Kenora that would have provided permanent work for the Grievor.

Analysis and Decision

[39] Duty to accommodate cases where file closure has resulted are "*evidence heavy*". As has been noted by other Arbitrators, such cases do not sit comfortably in the expedited CROA process, where the time to hear cases – and write decisions – is short.

[40] That said, all of the evidence and jurisprudence filed has been carefully reviewed in resolving this dispute, although not every fact or Award will be specifically mentioned. The arguments of the parties will be referred to within this analysis, rather than set out separately.

Legal Principles

[41] The principles which apply to accommodation cases were summarized in **AH834**, which was tabled in this proceeding. It is unnecessary to repeat that analysis here. Arbitrator Clarke also set out the Supreme Court of Canada's framework in **CROA 4503**.

[42] In summary, the Company's obligation – once a *prima facie* case of discrimination is established by the Union – is to accommodate the employee to the point of "*undue hardship*". The burden is on the Company to establish it has done so. As the Union pointed out, there are both procedural and substantive components to an employer's obligations, developed by the Supreme Court of Canada.

[43] As noted in *Lagana v. Saputo Dairy Products* Canada 2012 HRTO 1455 (CanLII), the procedural component requires that the employer "*take steps to understand the employee's disability-related needs and undertake an individualized assessment of potential accommodation measures to address those needs*".

[44] The substantive component *"considers the reasonableness of the accommodation offered or the respondent's reasons for not providing accommodation*" (at para. 52).

[45] It is well-settled that the Company's obligation is to provide "*reasonable"* accommodation. There is no requirement to provide "*perfect*" accommodation. As explained in **AH697** there is also no "*absolute obligation*" to find an accommodated position.

[46] Sometimes, such a position will not be found for a disabled employee. That could occur even if an employer is diligent in following its obligations. The Company is entitled to expect productive work and need not create new positions. Where job duties can be bundled together, the expectation is that will occur prior to the Company determining that the employee cannot be accommodated.

[47] However, it is not the case that an accommodated position *must* be a "bundled" position. Bundling is simply one way to meet that obligation.

[48] While I agree that the investigation of the Company is to extend beyond existing vacancies, that does not mean that open vacancies cannot provide suitable accommodation, or that the Company must demonstrate it considered that option *before* relying on open vacancies. Both bundling and existing vacancies can serve the purpose of accommodating an employee.

[49] While **AH834** recognized that the Company cannot rely on a "*review and slot*" approach *to justify that there is no accommodated role the grievor can do* (following from an earlier decision of Arbitrator Picher), that does not mean that if there *is* such an open position in the Company that *does* meet the Grievor's restrictions, that position cannot be used to provide reasonable accommodation. Each case will be dependent on its facts as to whether that has occurred.

[50] The point is to offer reasonable accommodation to the employee for productive work that meets his or her restrictions.

[51] Much of the jurisprudence surrounding the duty to accommodate focuses on whether an employer has – or has not – properly met these obligations.

[52] However, as noted by this Arbitrator in **AH834 -** and in the jurisprudence discussed, below - the duty to accommodate does not just focus on the actions of an employer. Accommodation is a "tripartite" process, which imposes obligations on not just the employer, but also on the Union and on the employee.

[53] Whether the obligations of the various parties/individual have been met is one which is dependent on looking at the *entire* accommodation process.

[54] An employee has an obligation to cooperate in the accommodation process: **CROA 4504.** He or she must also accept "*reasonable accommodation*", even if such accommodation is not "*perfect accommodation"* or does not meet every preference: *Lagana v. Saputo Dairy Products, infra*. An employee must also provide timely medical information to assist the employer in understanding any changing medical needs.

[55] Jurisprudence is of limited value, given the role of factual context in these types of cases.

[56] While the Company must accommodate an individual to the point of "*undue hardship*", it can *also* be the case that the Company's obligations to accommodate are "*discharged*", when other actors in that process do not meet their own obligations.

[57] While some jurisprudence describes this as reaching the point of undue hardship, it is more accurately described as the employer having discharged their obligations, because the process is brought to an end, as it has been frustrated.

[58] I am satisfied this is that type of case.

[59] The Company has filed several cases which *are* factually similar and which comment on the *employee's* obligation to cooperate and relocate, which are persuasive: **CROA 4313**; **CROA 4504**; **AH697.** Both parties relied on **CROA 3346**. The Union also filed several authorities, including this Arbitrator's decision in **AH834** and the Supreme Court of Canada's landmark decision in 1999 in *British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.E.U. (Meiorin),* as well as several other authorities.

[60] All of the jurisprudence has been carefully reviewed, although not every case will be mentioned. Several authorities set out the same principles, outlined above.

[61] There are several authorities which demonstrate the employee's obligations.

[62] In **CROA 4504**, an employee failed to provide updates about his medical condition and ignored the Company's efforts to obtain that information.

[63] The Arbitrator commented on an employee's obligations:

> The duty to accommodate does not apply only to the employer. The employee has significant obligations as well. For example, an employee may lose an entitlement to any further accommodation if he/she turns down a reasonable accommodation offer. Similarly, an employee loses the right to maintain an employment relationship, despite providing no services, by failing to provide the important medical information and updates an employer requires when managing an accommodated work scenario (at p. 7, emphasis added).

[64] In **CROA 4313**, the grievor was diagnosed with a seizure disorder resulting in work restrictions. The Grievor advised the Company he did not want to work outside Capreol or the transportation department and desired to remain in the bargaining unit.

[65] The Arbitrator found the Company had taken all reasonable measures, considering the constraints noted by the grievor. The Arbitrator did not give significant weight to the Grievor's "wish" to work in the bargaining unit.

[66] In that case – as in this case - the Company *had* identified a suitable position in Alberta and B.C. and the Grievor did not want to relocate. After noting he had reviewed the extensive evidence, Arbitrator Picher was

> *…compelled to the conclusion that the Company did all in its power to identify positions or reasonable accommodation for the Grievor, given his physical disability, and also given the very restricting limitations which he placed upon his availability, in that he would only work within Capreol and preferably within the same bargaining unit* (emphasis added).

[67] **AH697** has the closest fact situation to this dispute, as it recognizes that an employee based in a small location may need to relocate to find work.

[68] In that case, the grievor was based in Revelstoke. The grievor had the same physical restrictions in each FAF, as in the case in this dispute, and required sedentary work. After noting the importance of the evidence, and the factual context, including the "*tripartite involvement of the employer, employee and the employee's bargaining agent"* the Arbitrator noted there was no "*absolute obligation*" to find work for a disabled employee and further noted the limited opportunities available for useful work in Revelstoke. The Arbitrator also found it "*stood out*" that the Grievor had not offered to work in another location, such as Golden, which was a "*busy centre of railroad activity 150 km away from Revelstoke*".

[69] He stated:

> Had the grievor demonstrated that he was prepared to work in a busier centre such as Golden, for example, it would have been incumbent on the Company to embark on a search for modified duties for the grievor at that location. But the grievor, unfortunately, did not come forward with any indication that he was prepared to work elsewhere other than Revelstoke, where unfortunately there were no "meaningful" positions available…(at p. 9, emphasis added).

[70] The Arbitrator held the Company had "*met its duty to accommodate the Grievor up to the point of undue hardship*" (at p. 10).

[71] The Union relied on **CROA 4503**. While the Arbitrator in that case made a declaration that the Company "*could have conducted a broader search for accommodation beyond existing vacancies to include the possible bundling of duties*". The Arbitrator also noted that the search for accommodation was "*complicated*" as the grievor did not want to relocate. There was limited analysis in that case and no discussion of when the Company's obligations were discharged due to an employee's choice.

[72] The Arbitrator did state that decisions by the grievor not to relocate are "*relevant in examining an employer's diligence*…"

[73] I prefer the analysis in **CROA 4313**, and **AH697** to that in **CROA 4503**, being more detailed and on point with the issues in this case.

[74] Both parties relied on **CROA 3346.** In that case, the Arbitrator noted that the grievor had "…*rejected the Employer's proposal that I have found to be a reasonable one*".

[75] He went on that "[*s]ince the Employer's duty to accommodate has been discharged, the tests for establishing just and reasonable cause for terminating the grievor for non-culpable absenteeism have been met*" (emphasis added).

[76] Those two "*tests"* were set out in that Award as a) excessive absenteeism; and b) the unlikelihood of regular attendance in the foreseeable future.

Specifics of this Dispute: Accommodation

[77] Turning to the specifics of this dispute, the Union argued the Company did not meet the procedural and substantive components of a duty to accommodate. It has taken issue with the Company's efforts, arguing it was not individualized as required by **AH834** and that it was a "*review and slot*" approach cautioned against in that Award.

[78] As noted in **CROA 4503**, an Arbitrator must take a wholistic view of the entire accommodation process.

[79] This case raises and highlights the *Grievor's* obligations in this process.

[80] I disagree the Company did not meet the procedural and substantive components of its obligations or that locating a position which *did* meet the Grievor's needs shortly after his project ended was "*review and slot*".

[81] From a comprehensive review of the evidence, I am satisfied that the Company satisfied its procedural obligations to make an individualized assessment of the Grievor's restrictions and determine how he could be accommodated.

[82] I am satisfied it was the *Grievor* and not the Company who failed in his obligations to cooperate in the accommodation process.

[83] It is not disputed that Kenora is a small Terminal within the Company's operations, or that the Grievor suffered significant restrictions. The Company filed evidence that the opportunities to perform administrative sedentary work are limited in Kenora and that the type of sedentary opportunities required by the Grievor were available in its larger centres, such as Calgary and Winnipeg.

[84] Given the nature of the Company's operations, and the location of the Grievor in Kenora, this is not a surprising position. As noted in **AH697**, there can be locations were where accommodation at that location is difficult.

[85] The Company had determined what the Grievor's restrictions allowed, which was non-safety sensitive sedentary administrative work, which he had done as part of his project work accommodation. The Grievor's medical situation was static and had been static for years; it was not changing.

[86] The Company had already taken substantive steps to accommodate those sedentary restrictions with the project work, although that was a project which had slowed down.

[87] The Company was not required to maintain that project at a level which continued to provide accommodated work to the Grievor. It is not required to create new positions to satisfy its obligations and is entitled to productive work from its accommodated employees.

[88] The Grievor had an altercation with his supervisor for which he served a 20-day suspension for “conduct unbecoming”.

[89] The Grievor was allowed to work remotely on that project and had a preference to continue working remotely.

[90] However, the Company was not required to accommodate the Grievor’s preference to continue to work remotely.

[91] The Grievor has a duty to cooperate in the accommodation process. When the Grievor is based in a small Terminal, the Grievor may have to relocate to continue his employment with the Company, as the Company is not required to “*create work*” to keep the Grievor employed in Kenora.

[92] As noted in the facts, above, when the Company did provide a listing of open positions for the Grievor’s consideration, his response was whether those positions could be done remotely from Kenora. The Grievor had indicated his unwillingness to relocate from Kenora, given his family situation.

[93] While that was his choice, that choice had implications for the accommodation process.

[94] The Union argued the Company should have confirmed with the Grievor his intentions to remain in Kenora before closing his file, as his situation had changed and he and his wife were no longer together.

[95] It is relevant the Grievor never relayed that information to the Company in the years between 2020 and 2023.

[96] The finding in **AH697** supports the Company’s argument that it was not *the Company’s* ongoing responsibility to confirm the grievor’s intentions to remain in Kenora but the grievor’s obligation to “*come forward”* with that information. I agree with that conclusion. It is especially applicable where the Grievor had *already* told the Company he does not want to move, as in this case.

[97] The Company was entitled to rely on that choice continuing until the Grievor changes that limitation. If that situation changed, it was the *Grievor’s* responsibility to bring that to the attention of the Company, as part of his obligation to cooperate in the accommodation process.

[98] The Company gave the Grievor the opportunity to bring further information forward before closing his file, as it was required to do. That would have been the time for the Grievor to indicate he had changed his mind about his unwillingness to relocate.

[99] When a wholistic review is undertaken of this accommodation process, as required, it becomes apparent that shortly after the project work ended, in June of 2020,

the Company identified what I consider to be a reasonable accommodation for the Grievor which was based in Winnipeg.

[100] It brought that role to the Grievor to gauge his interest, with directions to involve the Company if he was interested.

[101] I am satisfied the role in Winnipeg provided reasonable accommodation to the Grievor given the Grievor's significant restrictions, the Company's operations, and the fact Kenora was a small terminal.

[102] While the Company could have been more specific in approaching the hiring manager and then coming to the Grievor with that role, I am satisfied its process of gauging the Grievor's interest first and then supporting that application by intervening with the hiring manager was reasonable on the facts of *this* case, given the Grievor's known reluctance to relocate, of which it was well aware. It was not required to first make those efforts only to find out the Grievor was uninterested in the role.

[103] The Union argued the Company had not considered "bundling" duties. However, it was unnecessary for the Company to "*bundle*" duties when there was an *actual permanent position* it had identified at an early point in time after his project work had ended, which would meet the Grievor's restrictions.

[104] On two occasions the Company had also provided *specific* instructions to the Grievor to be informed if he *was* interested in a role, so it could discuss the issue with the hiring managers and educate those managers on accommodation responsibilities. When it brought the Winnipeg position to him, it gave him this same instruction, which was also given in the meeting of May, 2020.

[105] Intending to have discussions with a hiring manager to inform him of the Grievor's unique situation and seek accommodation for the Grievor is not the "*review and slot*" approach cautioned against in **AH834**. Neither is it "*off-loading*" the work to the Grievor to find a role, also cautioned against in **AH834.** In this case, the Company specifically raised the role to the Grievor as meeting his needs for accommodation. The Grievor disregarded the instructions given by the Company to advise it of his interest. While he applied for that role, he chose not to advise the Company of that application, so the Company could support him and carry out its obligations.

[106] In failing to do so after being reminded to do so on two separate occasions, the Grievor did not carry out his part of that reasonable accommodation and cooperate in that process. By his failure to notify the Company of his interest and application after being specifically instructed twice to do so, the Grievor frustrated the Company's efforts to accommodate him in a role in Winnipeg, which met his restrictions.

[107] As the Grievor frustrated the Company's reasonable efforts to accommodate him in June of 2020, the Company has discharged its obligations towards him, as of that date.

[108] Even if that were not the case, the evidence demonstrates that after that point, the Grievor himself chose to engage in retraining with the WSIB, in order to train for a job *outside* of CP. He also ultimately took on other employment.

[109] It was not the case therefore – as the Union suggested – that the Company "*did nothing"* for three years between 2020 and 2023. The evidence established the Company was kept apprised by the WSIB of the Grievor's choice and of his retraining efforts with the WSIB (including his involvement in a social work course) and was aware he had made that choice.

[110] Rather than pursue Social Work, the Grievor ultimately was retrained as a retail clerk.

[111] This choice by the Grievor is relevant as it demonstrates the Grievor's intention to retrain and move on with his career, rather than wait for a suitable accommodated position. He also sought and obtained other employment, which also demonstrates that choice.

[112] There were significant benefits to the Grievor in making the choice to retrain instead of waiting to be accommodated. The Grievor was placed on full WSIB benefits while he retrained; and he qualified for higher ongoing payments until age 65 earlier in time, since those payments were based on the difference between the wages of his former role and those of what he retrained to be, which was a retail salesclerk earning $15 an hour.

[113] Had it been necessary to do so, I therefore would have alternatively concluded that the Company's accommodation obligations toward the Grievor were discharged when the Grievor chose to engage in a retraining program with the WSIB, rather than wait for an accommodated position with the Company.

Specifics of the Dispute: File Closure

[114] As the Company's accommodation obligations have been discharged toward the Grievor, what is left is determining if file closure is appropriate for innocent absenteeism.

[115] I am satisfied that the two "tests" for dismissal for absenteeism as discussed by Arbitrator Picher in **CROA 3346** have been met in this case.

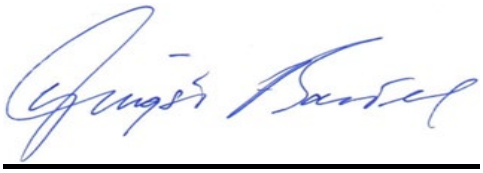
[116] The Grievor's absence record since his injury recovery is excessive. Of the 7 years and 4 months between his injury, he worked less than two of those years.

[117] Given he has also chosen to retrain as a retail sales clerk and has also taken on other employment.

[118] I am satisfied the Grievor has demonstrated his intention of not returning to work with the Company in the foreseeable future.

[119] The Grievance is dismissed.

I remain seized with jurisdiction to address any questions relating to the implementation of this Award; to correct any errors; and to address any omissions to give it the intended effect.



July 7 2025

CHERYL YINGST BARTEL
ARBITRATOR