CITATION: Canadian Broadcasting Corporation v. Canadian Media Guild et al., 2025 ONSC 4495
DIVISIONAL COURT FILE NO.: 127/25
DATE: 20250801

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

D. Corbett, M. Faieta and S. Nakatsuru, JJ.

BETWEEN:	
CANADIAN BROADCASTING CORPORATION Applicant	*Bonnea Channe* and *Brendan Egan*, Counsel for the Applicant
- and -	
CANADIAN MEDIA GUILD and VINCENT L. READY Respondents	*Stephen J. Moreau*, Counsel for the Respondent Canadian Media Guild
	HEARD at Toronto: July 21, 2025

REASONS FOR DECISION

S. Nakatsuru J.

[1] This judicial review application is about a grievance between the Canadian Broadcasting Corporation ("CBC") and Canadian Media Guild ("CMG"), a union representing most of CBC's English-language staff. CBC terminated the employment of the grievor, Jennifer Van Evra. CBC and CMG dispute the amount of "separation allowance"[1] that she was entitled to under the collective agreement. The matter was submitted to arbitration, and the Arbitrator, Vincent Ready, found in favour of CMG.

[2] CBC submits that the Arbitrator's decision dated January 17, 2025, (the "Decision") was unreasonable and he came to it in a procedurally unfair manner. It asks that the matter be remitted back to the Arbitrator for a re-hearing. CMG submits that CBC has not shown either basis to overturn the Decision and that the judicial review application should be dismissed.

[1] The parties have also referred to this as "severance". In these reasons, it will be referred to as "separation allowance" as that is how it is characterized under the collective agreement.

A. BACKGROUND

[3] The grievor started working at CBC in 2000. She became a permanent employee on October 24, 2005. After October 7, 2020, CBC sought to alter her work hours from 6 p.m. to 2 a.m. Sunday-Thursday. She asserted she had a medical restriction on her hours of work, but the CBC found her medical support was insufficient. The grievor refused to attend an independent medical examination and was placed on unpaid leave. Instead, she agreed to accept a layoff and a separation allowance.

[4] CBC asserted that the grievor's continuous service commenced on October 24, 2005. It deducted 40 months for periods of absence without pay and pro-rated her service for periods during which the grievor worked a reduced schedule. It argued that pro-rating the separation allowance in this way was a long-standing practice of CBC, which CMG knew of and to which CMG acquiesced.

[5] CMG argued that the grievor's continuous service commenced on September 23, 2002, and that there should only be a deduction for one period in which the grievor was on leave without pay. During the remaining periods, the grievor did not work because CBC failed to accommodate her disability or denied her sick pay. CMG also argued that the separation allowance should not be pro-rated for periods during which the grievor worked part-time.

[6] Given the differences between the union and the employer, the dispute went before the Arbitrator pursuant to the collective agreement. The parties agreed that the resolution of the dispute revolved around the interpretation of the collective agreement. As a result, it was agreed that the arbitration could be decided based on written submissions.

B. THE DECISION

[7] In the Decision, the Arbitrator ordered that the grievor was entitled to $96,782 as a separation allowance. He accepted CMG's position that the separation allowance should be calculated from CMG's date of September 23, 2002.

[8] Regarding the periods of leave, the Arbitrator found that the only period of leave which should be deducted from the grievor's continuous service was from January 2016 to January 2017, a leave which the grievor requested and CBC granted. Both parties agreed that this period should not be considered in calculating her separation allowance. Regarding the other five periods of absence cited by CBC as precluded by the terms of the collective agreement, the Arbitrator found those absences were not requested leaves but the result of CBC's failure to accommodate her disability or grant her sick leave.

[9] Finally, the Arbitrator found that there was insufficient evidence to support CBC's assertion that there was a long-standing practice of pro-rating the separation allowance for part time work. Moreover, there was no evidence that CMG was aware of such a practice or that it acquiesced to it. Thus, CMG was not estopped from asserting that the separation allowance should be calculated in the manner set out in the collective agreement.

C. THE ISSUES ON JUDICIAL REVIEW OF THE DECISION

[10] The applicant raises these issues on judicial review:

(1) The Decision was unreasonable in the following ways:

- The Arbitrator unreasonably decided that the start date to calculate the separation allowance was September 23, 2002, rather than October 24, 2005;
- The Arbitrator unreasonably decided that five leaves of absence taken by the grievor should be included in the separation allowance; and
- The Arbitrator unreasonably declined to pro-rate the periods where the grievor only worked part-time rather than full-time.

(2) The Arbitrator violated the duty of procedural fairness by failing to permit CBC to call *viva voce* evidence.

[11] For the following reasons, I find that the Decision was reasonable and the hearing was procedurally fair.

D. THE STANDARD OF REVIEW

[12] The presumptive standard of review for all questions on judicial review is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653. None of the exceptions to the presumption of reasonableness review are applicable in this case.

[13] Regarding breaches of procedural fairness, there is no standard of review: *Afolabi v. Law Society of Ontario,* 2025 ONCA 257, at paras. 59-60. The requisite level of procedural fairness is determined by applying the factors set out in *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817.

E. ANALYSIS

[14] Before analyzing the grounds of judicial review, I must first address an evidentiary issue.

1. CMG's motion to strike portions of the Guttman Affidavit

[15] On this judicial review application, CBC has introduced the affidavit of Beatrice Guttman, a Human Resources advisor with CBC. CMG objects to paragraphs 26-27 of her affidavit and seeks to strike them from consideration on this judicial review: *Jaffer v. Ontario (Health Professions Appeal and Review Board)*, 2019 ONSC 6770 (Div. Ct.), at para. 36.

[16] Ms. Guttman affirms in those paragraphs that, had she been called to testify before the Arbitrator, she would have testified that the CBC had been "consistently" pro-rating its employees' part-time service in calculating the separation allowance since the "mid-1990s".

[17] Evidence on an application for judicial review is ordinarily restricted to the evidence that

was before the administrative decision-maker. However, additional evidence may be adduced in very limited circumstances, such as where there is a complete absence of evidence on an essential point, where the evidence addresses a breach of natural justice that cannot be proven by the record, or to provide general background or context to the issues on the application: *Sierra Club Canada v. Ontario (Ministry of Natural Resources and Ministry of Transportation)*, 2011 ONSC 4086 (Div. Ct.), at paras. 13-14; *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 F.T.R. 297, at para. 21; *Rockcliffe Park Residents Association v. City of Ottawa*, 2024 ONSC 2690 (Div. Ct.), at paras. 35-36.

[18] CBC argues that the affidavit is admissible for two reasons. First, it shows the complete absence of evidence on an essential factual finding made by the Arbitrator about past practices of CBC in pro-rating the part-time and full-time periods of employment in calculating the separation allowance. Second, whether the Decision violated natural justice and/or whether the Arbitrator did not provide CBC with procedural fairness when he denied its request to call *viva voce* evidence.

[19] Regarding the first basis, I have great difficulty in seeing how the affidavit would demonstrate an absence of evidence. In the circumstances of this case, any absence of evidence would be apparent from the record. What CBC effectively attempts to do in submitting this affidavit is to fill in the alleged absence of evidence with evidence to the contrary to support its estoppel argument: *Lovell v. Ontario (Minister of Natural Resources and Forestry)*, 2022 ONSC 423 (Div. Ct.), at para. 8.

[20] There is more merit to the second argument. It is true that the denial of the opportunity to call *viva voce* evidence by CBC is apparent from the record. However, Ms. Guttman's evidence, which is the *viva voce* evidence CBC wished to call, provides the contours for the unfairness alleged to have been caused by the Arbitrator's ruling.

[21] CMG's essential objection to the paragraphs is that they are irrelevant. While CMG goes too far in its position that it is irrelevant, as my reasons will show, this evidence has very little, if any, probative value on either of CBC's arguments. This is because Ms. Guttman's affidavit does not present any evidence that CMG was aware of CBC's past practice.

[22] I conclude that the impugned portions of the affidavit are admissible for the purpose of showing the evidence that would have been led but for the alleged procedural unfairness. It is admitted for that limited purpose and not for the truth of its contents.

2. The start date to calculate the separation allowance

[23] An important piece of context in assessing the reasonableness of the Decision is the mutual view shared by everyone involved in the arbitration that written submissions would suffice to dispose of the grievance. The parties' respective interpretations of the collective agreement's language on the key grievance issue (how to calculate service for separation allowance purposes) was the subject of extensive and detailed written submissions numbering five in total.

[24] On the issue of the start date, CBC did not argue before the Arbitrator, nor does it argue on the judicial review application that anything more than written submissions was required to decide. On this issue, no facts were ever in dispute.

[25] Rather, CBC submits that the Decision was unreasonable on this issue because it does not explain why the Arbitrator decided the way he did. Put differently, it was unreasonably conclusory: *Vavilov,* at paras. 95, 102.

[26] I do not agree.

[27] The admittedly terse reasons must be assessed in light of the parties' reliance solely on written submissions and the content of those submissions on this issue.

[28] The grievor's entitlement to a separation allowance is founded on article 46.12.2 of the collective agreement which requires CBC to pay "a separation allowance equal to one (1) week's salary for each four (4) months of continuous service or major portion thereof with the [CBC]."

[29] Resolving the question of the start date revolved around interpretation of the collective agreement provisions about whether the grievor's service as a "temporary" employee was to be counted as service for separation allowance purposes, effectively increasing her continuous service.

[30] CBC's position relied on the wording of article 5.1 which defined the grievor's corporation seniority as based upon her "continuous service date" which CBC contended was October 24, 2005, the date the grievor became a permanent employee. Throughout the written submissions, CBC did not alter or add to this clearly-defined position.

[31] CMG's position relied additionally on article 27.5.6, which stated that a temporary employee who later became a permanent employee would have their previous time as a temporary employee counted as part of corporation seniority. Therefore, according to the Union, the start date was September 23, 2002, given that the grievor had been with CBC as a temporary employee prior to her becoming a permanent employee. CMG submitted that the collective agreement was clear and unambiguous.[2]

[32] Fundamentally, there were only two simple and straightforward options presented to the Arbitrator based on the interpretation of a handful of provisions in the collective agreement. No facts were in dispute. In the Decision, the Arbitrator states he "carefully considered the submissions of both parties" and found that CMG's position was "correct." In this context, the reasons make it sufficiently clear why the Arbitrator decided in the fashion that he did. There was a binary choice that needed to be made. He chose CMG's interpretation.

[33] The Decision on this issue falls within a reasonable range of outcomes and is tenable in light of the legal and factual constraints presented in the case. When the Decision is read "in light of the history and context of the proceedings in which they were rendered… [they] explain an aspect of the decision maker's reasoning process that is not apparent from the reasons themselves or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency": *Vavilov,* at para. 94.

[34] Part of the law that needs to be heeded is the long-standing jurisprudential commitment

[2] The CBC raised in their written submissions that CMG at one point in their submissions conceded October 24, 2005, to be the continuous service date. There is no merit to this. Even if the CMG "misspoke" at that time, it was clear both in their initial and final submissions, there never was a concession and their position was September 23, 2002. The Arbitrator would not have been confused about this.

affording labour relations tribunals the highest degree of deference owing to the administrative decision maker's expertise and experience. As stated in *Ball v. McAulay*, 2020 ONCA 481, 452 D.L.R. (4th) 213, at para. 43, "[f]ew tribunals have received more judicial deference than labour tribunals and nothing in *Vavilov* detracts from this posture". See also *Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v. Bricklayers, Masons Independent Union of Canada, Local 1*, 2022 ONCA 780, 476 D.L.R. (4th) 421, at para. 77; *Enercare Home & Commercial Services Limited Partnership v. UNIFOR Local 975*, 2022 ONCA 779, 476 D.L.R. (4th) 342, at para. 64; *Electrical Power Systems Construction Association v. Labourers' International,* 2022 ONSC 2313 (Div. Ct.), at para. 14.

[35] Interpreting and applying provisions setting out severance and service formulas are at the core of a labour arbitrator's expertise. In assessing the adequacy of the reasons of the Arbitrator, the following acknowledgment by Abella J. in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board),* 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 23 is worth highlighting:

> The arbitrator in this case was called upon to engage in a simple interpretive exercise…. This is classic fare for labour arbitrators. They are not writing for the courts, they are writing for the parties who have to live together for the duration of the agreement. Though not always easily realizable, the goal is to be as expeditious as possible.

3. The leaves of absence taken by the grievor

[36] The Arbitrator accepted CMG's assertion that five out of the six unpaid leaves that the grievor took were not requested by the grievor. He found, as submitted by CMG, that CBC failed to accommodate the grievor or provide her sick leave.

[37] On this judicial review application, CBC contends that there was no evidence to support those findings making his Decision on this issue unreasonable.

[38] I would not give effect to this ground of judicial review for two reasons.

[39] First, during the course of the exchange of submissions, to support its argument that the periods were a result of the failure to accommodate and the refusal to give sick leave, CMG did produce a 2013 arbitration award made by the same Arbitrator, Vincent Ready, involving the grievor to support their position that the grievor's leave was a result of a failure to accommodate or a refusal to provide sick leave. While CBC criticizes the isolated nature of this evidence and the nature of the mediated settlement that was without factual findings, it nevertheless was "some" evidence that the Arbitrator could properly rely upon and draw reasonable inferences from. As well, the reasons as a whole reflect the Arbitrator's long experience and expertise as a labour arbitrator, in assessing collective agreements, and in addressing issues arising between this grievor and CBC. The fact that the Arbitrator has brought this experience and expertise to bear should be considered in assessing the reasonableness of the Decision: *Vavilov*, at para. 93.

[40] I would also observe that although this was not evidence, CBC, in its first submission to the Arbitrator in setting out the background to the arbitration, acknowledged a history of a disputed failure to medically accommodate the grievor. This history led to an unauthorized leave of absence culminating in the grievor taking her lay-off and her separation allowance.

[41] Second, the Arbitrator also determined that these leaves were not "requested" leaves. In its submissions, CMG took the position that article 71.5 of the collective agreement excluded from the calculation of service only those periods of unpaid leave that had been "granted" according to the plain wording of the article. The Arbitrator concluded that there was only one period of absence that was requested by the grievor and granted by CBC. The other five had not been shown to be granted in this manner. Thus, regardless of the exact nature of why each specific leave was taken by the grievor, CBC had not shown that these five periods of leave should not be counted.[3]

[42] In my view, even if the evidence was incomplete regarding all the leaves being a result of failures to accommodate or refusals to provide sick leave, this was not central to the reasoning or outcome, especially given the deference that is to be afforded to his Decision. Put another way, it does not render the Decision unreasonable in respect of this issue.

4. Declining to pro-rate the periods where the grievor only worked part-time

[43] On this judicial review application, CBC submits that the Arbitrator erred in determining the grievor's weekly salary by basing the severance award on a full-time salary. The grievor was not working full-time when her employment ended. Under article 46.14.2, CBC submits that the grievor was only entitled to severance based on her part-time salary.

[44] In assessing this submission, again, it is important to carefully review the positions taken by the parties before the Arbitrator. Before the Arbitrator, in its calculation of the separation allowance, CBC argued that a pro-rated salary recognizing the part-time and full-time service should be used to calculate the separation allowance as this was CBC's past practice. This past practice grounded an argument that the Union should be estopped from objecting to the pro-rating of the separation allowance.

[45] The Arbitrator dismissed CBC's position, stating that there was insufficient evidence of a long-standing practice of pro-rating and no evidence that CMG was aware of or acquiesced to such a practice.

[46] On this judicial review application, CBC submits that the evidence established both of those points, and therefore CMG should have been estopped.

[47] There is little merit to this ground of review.

[48] First, the Decision is not rendered unreasonable by the Arbitrator failing to explain the calculation of the award after the rejection of CBC's argument for pro-rating the separation allowance. Given the position of the parties taken in their written submissions, this issue was not a live one before the Arbitrator. The only time CBC raised it was as a "hypothetical" to support its position that it had paid the grievor all that she was entitled to. It was not an alternative position as it is now contended on judicial review. The Arbitrator cannot be faulted for failing to address it in these circumstances. While CBC now complains about his failure to explain his rationale, the Arbitrator was being responsive to the arguments raised before him.

[3] There is in the collective agreement a complex process as found in article 71 and Appendix "U" of the collective agreement to have the periods of leave be requested of and granted by CBC. No evidence was led nor did CBC argue that this had taken place for the five disputed leaves of absences.

[49] Second, CMG disagrees with CBC's assertion that CMG was aware of a long-standing practice whereby CBC pro-rated members' service based on part-time and full-time work. Before the Arbitrator, CBC's evidence on this point was a single email which merely asserted that CBC was pro-rating service for one employee in 2015. In response, CMG led evidence that it had objected to that approach and the parties agreed to submit the question to arbitration. Put another way, both the practice and CMG's awareness and acceptance were challenged even back then. Thus, the evidence before the Arbitrator provided a tenuous foundation for estoppel.

[50] In my opinion, the Arbitrator reasonably rejected CBC's assertion that the evidence established estoppel by past practice. There was no evidence that CMG knew of and acquiesced to the practice. Deference should be afforded to the Arbitrator's factual finding on this point. Moreover, the caselaw well supports that deference extends to the evidence the arbitrator hears and the standards they apply to the question of whether the union is estopped from taking a particular position: *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, 2011 SCC 59, [2011] 3 S.C.R. 616, at paras. 49-51.

[51] Lastly, consideration of Ms. Guttman's affidavit does not further CBC's position. It provides no evidence that CMG was aware of CBC's practice of pro-rating members' service.

5. Procedural Fairness

[52] This ground is related to the last ground of review on reasonableness. CBC submits that it was denied procedural fairness in the Decision because the Arbitrator refused to admit evidence in response to issues raised by CMG. CBC points to their written submission where they state CBC reserved the right to call *viva voce* evidence on CBC's payment practices or otherwise. However, the Arbitrator refused to admit that evidence after conducting a case management meeting.

[53] CMG submits that there was no breach of procedural fairness. CBC apparently sought to lead testimony of Ms. Guttman that CBC had a decades-long practice of pro-rating part-time service. However, CBC did not advise the Arbitrator of the nature of the *viva voce* evidence it intended to call. Instead, it simply "waited in the weeds" without giving the Arbitrator a reasonable opportunity to assess the relevance or probative value of the purported evidence. CBC only submitted Ms. Guttman's evidence for the first time on judicial review.

[54] I find that CBC was afforded procedural fairness. The parties had agreed to make their arguments on the basis of written submissions. The Arbitrator went out of his way to provide a fulsome opportunity to make submissions in that regard. After receiving CMG's reply, CBC requested an opportunity to respond to new matters raised for the first time in CMG's reply. Arbitrator Ready allowed CBC's request. This was an additional opportunity to make submissions and present evidence. Simply putting in a near-boilerplate sentence in their submissions that CBC reserved the right to call *viva voce* evidence would not have provided the Arbitrator with any meaningful basis to dramatically change the nature and length of the proceedings. Considering the *Baker* factors at play in this case, CBC was not denied procedural fairness.

[55] Taking into account Ms. Guttman's affidavit tendered on this judicial review application does not change this conclusion. Though she affirmed that CBC has a decades-long practice of pro-rating members' periods of service, as pointed out above, Ms. Guttman says nothing about either CMG's knowledge of this or its acquiescence to it. Even had CBC been afforded the chance to call this evidence, it would not have affected the Arbitrator's decision. While the application of the rules of natural justice cannot depend upon speculation about what the decision on the merits might have been if natural justice had been provided, the significance of the evidence that was rejected can be considered in assessing whether a breach has been shown: *Université du Québec à Trois-Rivières v. Larocque*, [1993] 1 S.C.R. 471, at 493, 491-92.

F. DISPOSITION

[56] For these reasons, the application for judicial review is dismissed. As agreed to by the parties, CBC will pay CMG $11,000 all-inclusive in costs.

S. Nakatsuru J.

I agree.

D.L. Corbett J.

I agree:

M. Faieta J.

Released: August 1, 2025

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