

CITATION: Canada Post Corporation v. Canadian Postmasters and Assistants Association,
2025 ONSC 6469
DIVISIONAL COURT FILE NO.: 2961/24
DATE: 20251205

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
Sachs, Matheson and Shore JJ.

BETWEEN:)
)
CANADA POST CORPORATION) *Stephen Bird and Caroline Richard, for the*
) Applicant) Applicant
– and –)
)
CANADIAN POSTMASTERS AND) *Alison McEwen and Claire Boychuk, for the*
ASSISTANTS ASSOCIATION) Respondent
) Respondent)
)
)
) **HEARD in Ottawa:** September 9, 2025 (by
) videoconference) followed by written
) submissions

REASONS FOR DECISION

[1] Canada Post Corporation (CPC) seeks judicial review of the decision of Arbitrator Wayne Thistle dated December 7, 2024 (the Award), regarding a National Policy Grievance filed by the Canadian Postmasters and Assistants Association (the Union). CPC submits that the Award unreasonably denied it the right to seek recovery of overpayments made to employees in mistake of fact.

[2] This application for judicial review is dismissed for the reasons set out below.

Brief background

[3] This application challenges the second of two arbitration awards of Arbitrator Thistle regarding the proper incremental pay increases for employees who were “acting” in higher

classification positions, rather than being appointed into those positions. The Union grieved, alleging that employees who were acting in Postmaster or Senior Assistant positions were not receiving proper pay increments “as if appointed” to those positions.

[4] The Union’s grievance was filed in 2016. CPC denied the grievance, stating that the proper calculation had been applied and the employees were being properly compensated when working at a higher classification level. CPC continued to pay its employees in accordance with its interpretation of the collective agreement until the release of the first arbitral award in 2021.

[5] After the grievance had been filed in 2016, CPC did not notify Union members that there was a risk that some of the money they were being paid while in acting positions would be recovered in the case of an overpayment. However, the issue was discussed between the parties at the national level and between counsel prior to the grievance being heard.

[6] The first award was made by Arbitrator Thistle in 2021 and is not challenged in this application. Arbitrator Thistle determined the proper pay under the collective agreement. CPC then paid employees in accordance with the 2021 award.

[7] Based on the collective agreement interpretation determined in the 2021 award, there were some Union members who had been underpaid prior to that time and others who had been overpaid.

[8] Underpayment was addressed. However, the parties disagreed about the approach to overpayment under the collective agreement, giving rise to the Award at issue in this application.

The Award

[9] The Award at issue was made based upon an agreed process including but not limited to an agreed statement of fact. Witnesses were not excluded but neither party called witnesses.

[10] The Arbitrator found that within a time period that began eight years before, and spanned five years, some employees had been overpaid. The parties did not put forward evidence that permitted an assessment of the extent of the overpayments.

[11] The Arbitrator considered legal precedents regarding overpayments, most significantly the 2016 award in *Re Ottawa Board of Education and Federation of Women Teachers’ Associations*, 26 L.A.C. (3d) 146. The Arbitrator quoted from that award at length, including its reliance on the common law from both England and the Supreme Court of Canada concerning the recovery of overpayments.

[12] Applying those authorities, the Arbitrator concluded that this was a case of mistake of fact, not mistake of law. That finding is not challenged on this application for judicial review.

[13] The Arbitrator further concluded that there were two defences that were open to avoid an obligation to repay an overpayment, specifically a material change in position and the doctrine of estoppel.

[14] The Arbitrator considered the doctrine of estoppel and was satisfied that it applied. The Arbitrator noted the recognition by the Supreme Court of the hardships that result when a person is led to believe that their income is higher than it really is. The Arbitrator found that this prejudice provided the seeds of what he referred to as the present-day defences to an individual's duty to repay an overpayment made through mistake of fact. The Arbitrator considered CPC's submissions about the need for adjustments to pension and other contributions but noted that there was a process for adjustments to contributions.

[15] The Arbitrator also considered CPC's submission that Article 35.11 of the collective agreement governed, setting out not only the process for overpayments, but also the entitlement to recover overpayments. That Article provided as follows, under the heading "Recovery of Overpayments":

When an employee has been overpaid through no fault of her own and the overpayment is in excess of fifty dollars (\$50.00), the paying office will, before recovery action is implemented, advise the employee of the intention to recover the overpayment. If the employee advises her local management that the stated recovery action will create a hardship, recovery will not exceed ten percent (10%) of the employee's pay each pay period until the entire amount is recovered. Notwithstanding the foregoing, in the event employment ceases, any outstanding amounts may be recovered from final pay.

[16] The Arbitrator disagreed with CPC, finding that the above article was about process. The Arbitrator held that: "this clause is in relation to a process to manage the overpayments and has nothing to do with the entitlement to recover overpayments."

[17] The Arbitrator concluded as follows:

After a careful review of the collective agreement, statutory provisions, prior arbitration awards and court decisions, I have concluded that the Corporation has violated the agreement and the affected Grievors are not compelled to pay any compensation to the Corporation because of the overpayments.

Issues and Standard of Review

[18] CPC raises the following issues on this application for judicial review:

- (i) CPC submits that the Arbitrator failed to reasonably interpret Article 35.11;
- (ii) CPC submits that the finding that there was estoppel, precluding recovery of the mistaken payments, was unreasonable; and
- (iii) CPC submits that the Award, to be reasonable, ought to have included a discussion about unjust enrichment.

[19] There is no issue that the standard of review is reasonableness and that CPC bears the onus of showing that the Award is unreasonable: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653. Nor is there any issue that the hallmarks of reasonableness are justification, transparency and intelligibility: *Vavilov*, at para. 99.

[20] The Court's review starts from the principle of judicial restraint and respect for the distinct role of the decision maker and should respect the decision maker's special expertise, which is well-accepted in the labour context: *Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v. Bricklayers, Masons Independent Union of Canada, Local 1*, 2022 ONCA 780, at paras. 55, 61, citing *Vavilov*.

Analysis

[21] Beginning with Article 35.11, this is not a case where an arbitrator failed to consider the collective agreement. Here, the Arbitrator expressly considered Article 35.11 in the Award. CPC essentially disagrees with the Arbitrator's interpretation of that article. CPC submits that Article 35.11 provides that CPC is entitled to recover overpayments, and not just the process for doing so.

[22] The issue for us is not whether the article could bear a different interpretation, but whether the interpretation in the Award is reasonable. The reasons for decision on this issue, albeit brief, interpret Article 35.11 as relating to the process for recovering overpayments, not the entitlement to recover them. This interpretation is consistent with the lengthy discussion in the Award concluding that overpayments due to mistake of fact may be recovered subject to available defences. In other words, absent a defence, the overpayment is recoverable. The Award did not conclude that overpayments were never recoverable.

[23] CPC submits that the Award renders Article 35.11 meaningless. It does not do so. When there is an overpayment for which no defence is shown, the process in Article 35.11 applies. However here the Award found that a defence was shown.

[24] CPC has therefore not demonstrated that the treatment of the collective agreement in the Award renders it unreasonable.

[25] The second issue relates to the finding that the defence of estoppel was established by the Union. CPC accepts that the Arbitrator had the jurisdiction to apply that defence but submits that he failed to do so reasonably.

[26] CPC submits that the Arbitrator ought to have expressly analyzed and discussed each of the three requirements of estoppel in the Award. This defence requires that (1) the parties be in a legal relationship at the time of the promise or assurance; (2) that the promise or assurance be intended to affect that relationship and be acted on; and (3) that the other party in fact relied on the promise or assurance: *Trial Lawyers Association of British Columbia v. Royal & Sun Alliance Insurance Company of Canada*, 2021 SCC 47, [2021] 3 S.C.R. 490, at para. 15.

[27] In support of CPC's submission that a detailed analysis was required, CPC relies on *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, 2011 SCC 59, [2011] 3 S.C.R. 616. At para. 58, in analyzing the facts of the case, the Court noted that

the arbitrator's reasons set out, in detail, the evidence, submissions of the parties and the arbitrator's analysis. These comments were not requirements for all awards.

[28] In *Nor-Man*, at paras. 5-6, the Supreme Court spoke of the flexibility that applies to arbitrators when applying equitable principles, holding as follows: "Labour arbitrators are not legally bound to apply equitable and common law principles — including estoppel — in the same manner as courts of law. Theirs is a different mission, informed by the particular context of labour relations. To assist them in the pursuit of that mission, arbitrators are given a broad mandate in adapting the legal principles they find relevant to the grievances of which they are seized. They must, of course, exercise that mandate reasonably, in a manner that is consistent with the objectives and purposes of the statutory scheme, the principles of labour relations, the nature of the collective bargaining process, and the factual matrix of the grievance."

[29] We are not persuaded that the absence of a formal, detailed analysis of the component parts of estoppel renders the Award unreasonable.

[30] CPC further submits that if the Arbitrator had done the formal, detailed analysis, he would have concluded that none of the criteria were met. However, the Award covered the criteria: CPC had made overpayments to employees over a lengthy period of time; the affected employees did not cause the error; there was no notice to the employees of the risk of overpayment and recovery; and that it had been recognized that hardships result when a person is led to believe that their income is higher than it really is. The Arbitrator provided a rational justification for the Award, bearing in mind that he was adapting equitable principles as labour arbitrators are entitled to do. In that regard, it was reasonable to proceed, given the grievance context, in the absence of individualized evidence of detrimental reliance. CPC has not shown the Award that the Award was unreasonable in these circumstances.

[31] A potential issue was also raised by the Court with respect to this aspect of the Award. In 2009, the Supreme Court released its decision in *B.M.P. Global Distribution Inc. v. Bank of Nova Scotia*, 2009 SCC 15, [2009] 1 S.C.R. 504, a case about monies paid under a mistake of fact (a fraudulent cheque) in the banking context and the defences to repayment. That decision considered authorities that were also relied upon in *Re Ottawa Board of Education and Federation of Women Teachers' Associations* and in turn in the Award. *B.M.P.* was not put before the Arbitrator or addressed in the Award. The parties provided written submissions on this potential issue.

[32] It is common ground between the parties that while *B.M.P.* has been widely followed in civil cases, mainly regarding financial institutions, it has not yet entered the labour arbitration jurisprudence. CPC makes the observation that this may well be due to continued reliance on past arbitral awards. The Union notes that *B.M.P.* is focused on a bank's right to recover from a company that received a payment under a fraudulent cheque. It is not an employment case. The Union further submits that *B.M.P.* did not overturn the prior authorities that have informed the arbitral law and again notes the flexibility afforded labour arbitrators and the importance of their specialized expertise.

[33] Having considered the submissions on *B.M.P.* in the context of the facts of this case and the Award, we conclude that its omission does not render the Award unreasonable (nor, as CPC

suggests, incorrect). We need not decide whether *B.M.G.* may be significant in other labour cases. As noted above, labour arbitrators are not necessarily required to apply equitable doctrines in the same manner as the courts.

[34] Lastly, we agree with the Union that the absence of a discussion in the Award about unjust enrichment does not render the Award unreasonable. Unjust enrichment was not raised before the Arbitrator. As a general matter, the tribunal should deal with the issue first and make its views known: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 24.

[35] “This is particularly true where the issue raised for the first time on judicial review relates to the tribunal’s specialized functions or expertise. When it does, the Court should be especially careful not to overlook the loss of the benefit of the tribunal’s views inherent in allowing the issue to be raised”: *Alberta (Information and Privacy Commissioner)*, at para. 25.

[36] We are not persuaded that CPC should be permitted to raise unjust enrichment for the first time in this Court.

[37] Having regard for all the reasons advanced by CPC in support of its position, we are not persuaded that the Award is unreasonable. It has the hallmarks of justification, transparency and intelligibility, and is squarely within the special expertise of the Arbitrator.

Order

[38] The application is therefore dismissed. CPC shall pay the Union costs in the agreed-upon sum of \$5,000, all inclusive.

Sachs J.

Matheson J.

Shore J.

Released: December 5, 2025

CITATION: Canada Post Corporation v. Canadian Postmasters and Assistants Association,
2025 ONSC 6469
DIVISIONAL COURT FILE NO.: 2961/24
DATE: 20251205

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

CANADA POST CORPORATION

Applicant

– and –

CANADIAN POSTMASTERS AND
ASSISTANTS ASSOCIATION

Respondent

REASONS FOR DECISION

THE COURT

Released: December 5, 2025

2025 ONSC 6469 (CanLII)