

IN THE MATTER OF AN IMPLEMENTATION DISPUTE

BETWEEN:

The College Employer Counsel

and

OPSEU

Before: William Kaplan
Sole Arbitrator

Appearances

For the CEC: Tim Liznick
Hicks Morley
Barristers & Solicitors

For OPSEU: Colleen Bauman
Christine Davies
Goldblatt Partners
Barristers & Solicitors

The matter in dispute proceeded to a hearing held by Zoom on November 18, 2022.

Award

On September 23, 2022 – following a mediation/arbitration that took place on September 7, 8 & 9, 2022, I issued an award settling the terms of the collective agreement between The College Employer Council and OPSEU. The award contained the following term:

Remainder

Both the calculation and allocation of the remainder is remitted to the parties. At the request of the parties, I remain seized to assist them as mediator/arbitrator should there be any disputes.

Unfortunately, the parties were unable to agree upon the calculation of the remainder. In the result, and given the specific reservation of jurisdiction, the parties filed written submissions and the dispute then proceeded to a hearing held by Zoom on November 18, 2022. Given the passage of time, and the term of the collective agreement, there is some urgency in finalizing the calculation formula so that the available monies can be allocated to the benefit of the bargaining unit. The written submissions filed in advance, together with those made at the hearing, were sufficiently fulsome that there is no need for a full hearing on the issue; a conclusion that is, in any event, buttressed by the fact that the governing law is fully settled.

Without doubt, the leading case – correctly decided in my view – is *St. Luke's Place & ONA 2022* CanLII 51864 (Sheehan). Following a full view of the authorities (and none are to the contrary), Arbitrator Sheehan concluded that statutory benefits such as CPP, EI, WSIB – the statutory benefits at issue here – are to be included in the calculation of the remainder. Arbitrator Sheehan observed that, “such costs fall within the definition of compensation under Bill 124 ... [and this] is self-evident and without dispute.” Other cases, and there are many, not to mention well-established practices across the province, confirm this conclusion.

Accordingly, I direct the parties to include the statutory benefits in dispute– CPP, EI and WSIB for full-time employees in the calculation of the remainder – and to do so forthwith applying generally accepted methodologies so that the remainder funds can be allocated with no further delay.

Conclusion

At the request of the parties, I continue to remain seized with respect to the implementation of my initial award and this matter.

DATED at Toronto this 21st day of November 2022.

“William Kaplan”

William Kaplan, Sole Arbitrator