

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

CASE NO. 4525

Heard in Montreal, December 15, 2016

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Dispute with respect to the implementation of *CROA Case No. 4208*, specifically as to whether Mr. Gauvin's July 2008 dismissal disentitled Mr. Gauvin to Health Spending Account (HSA) benefits for his service prior to his July 2008 dismissal.

JOINT STATEMENT OF ISSUE:

In July 2008, Mr. Gauvin's employment was terminated by the Company. This termination was grieved and heard by CROA Arbitrator Michel Picher at CROA in May 2013. On May 17, 2013, Arbitrator Picher issued *CROA Case No. 4208*, in which Arbitrator Picher concluded:

The grievance is therefore allowed, in part. I direct that the grievor be reinstated into his employment forthwith, without compensation for any wages or benefits lost. The grievor's reinstatement shall be conditioned upon his accepting, at the discretion of the Company, to be precluded from working in any form of passenger service and being restricted to work in freight service. Any possible return of the grievor to passenger service shall be entirely at the discretion of the Company.

In 2016, a dispute with respect to this Award emerged. The Company asserted the position that Mr. Gauvin's dismissal broke Mr. Gauvin's service with respect to the HSA and he would only be eligible for HSA benefits based on his years of service from 2013 to 2016. The Union promptly filed this supplemental dispute to CROA for resolution.

The Union contends that as of 2016 Mr. Gauvin has 26 years of active, pensionable service. He is therefore entitled to 26 years' worth of HSA benefits earned in accordance with the November 13, 2004 Memorandum of Settlement setting out the terms governing the HSA. The Union contends that Mr. Gauvin's HSA entitlements are an earned benefit that cannot be reduced by virtue of broken service. There is nothing in the November 13, 2004 Memorandum of Settlement, Arbitrator Picher's award in *CROA Case No. 4208* or anywhere else to deprive Mr. Gauvin of 23 years' HSA benefits that he had earned as of July 2008.

The Union seeks an order that Mr. Gauvin is entitled to HSA based on all years of active service, per the formula in the HSA Agreement. The Union requests that the Arbitrator order that Mr. Gauvin is entitled to HSA based on 26 years of active service.

The Company disagrees with the Union's position. The Company maintains that Mr. Gauvin's dismissal broke Mr. Gauvin's service with respect to HSA benefits and that Mr. Gauvin is only eligible for HSA benefits based on his years of service from 2013 to 2016.

FOR THE UNION:
(SGD.) W. Apsey
GENERAL CHAIRMAN

FOR THE COMPANY:
(SGD.) C. Clark
Assistant Director Labour Relations

There appeared on behalf of the Company:

- D. Pezzaniti – Manager, Labour Relations, Calgary
- D. E. Guerin – Senior Director, Labour Relations, Calgary

And on behalf of the Union:

- K. Stuebing – Counsel, Caley Wray, Toronto
- W. Apsey – General Chairman, Smiths Falls

AWARD OF THE ARBITRATOR

Introduction

1. The Teamsters Canada Railway Conference (TCRC), on behalf of Mr. Denis Gauvin, has grieved the calculation of Mr. Gauvin's Health Spending Account (HSA). The TCRC argues that the calculation should include Mr. Gauvin's twenty-six active years of service.
2. The Canadian Pacific Railway Company (CP) had calculated the HSA based only on the three years of active service following Mr. Gauvin's reinstatement pursuant to CROA&DR 4208.
3. For the following reasons, the arbitrator concludes that Mr. Gauvin's HSA should be calculated based on his entire twenty-six years of active service with CP.

Health Spending Account Agreement

4. In November, 2004, the parties came to an agreement on the HSA (TCRC Exhibit 1; Tab 5). The HSA would apply to employees who retired after December 31, 2004.
5. The HSA described the formula used to calculate employees' annual entitlement:

The amount of money is determined by a formula, based on an employee's length of service with the company. Under the formula, an employee will accrue \$33 for each year of active service. For example, if an employee had 26 years of service when he retired, he would receive \$858 each year in his HSA (\$33 per year x 26 years of service = \$858 per year). When the employee died, his surviving spouse would be eligible for the full amount of the HSA for the rest of her life.

(Underline in original)

Mr. Gauvin's Service

6. CP hired Mr. Gauvin on July 2, 1985. However, due to the events described in CROA&DR 4208, an interruption occurred in his continuous active service. The reinstatement order included these sentences:

The grievance is therefore allowed in part. I direct that the grievor be reinstated in his employment forthwith, without compensation for any wages or benefits lost.

7. Mr. Gauvin returned to work with his seniority. Mr. Gauvin's pension calculation included two pockets of service. The period between his dismissal and his reinstatement under CROA&DR 4208 created the gap between these two pensionable service periods.

Parties' Arguments

8. The TCRC argued that Mr. Gauvin's HSA should be calculated based on his twenty-three years of active service from 1985 to 2008 and on the service from his 2013

reinstatement to the date of his retirement in 2016. This gives him twenty-six years of active service for calculation purposes, rather than the three years CP has used.

9. CP argued that Mr. Gauvin's 2008 dismissal broke his service and that the HSA must be calculated solely on his service following his 2013 reinstatement. In CP's view, to be eligible for the HSA, an employee must retire from the company. Since Mr. Gauvin did not retire in 2008, the years of service prior to that date must be excluded from any HSA calculation.

10. CP further referred to its pension plan and the fact that a pension may be made up of multiple pockets depending on an employee's service. CP, when referring to its pension plan (CP Brief; paragraph 23), submitted that:

23. You will notice there is no reference to a HSA credit. Mr. Gauvin did not retire with the Company. He is simply not eligible for this benefit. Ceasing to be a member of the pension plan effectively closed the pocket of service for the grievor. This pocket of service was from the date Mr. Gauvin was hired on July 2, 1985 until July 25, 2008 (22 years and 8 months).

Analysis and Decision

11. CP did not persuade the arbitrator that its pension plan had any relevance to the calculation of Mr. Gauvin's entitlement under the HSA. Indeed, CP noted that its pension plan made no reference to the HSA.

12. While pensions have their own extensive legal framework, Mr. Gauvin's HSA entitlements are based solely on his years of service. Because of CROA&DR 4208, Mr.

Gauvin was reinstated in his employment. There was no break in his employment relationship, though the remedy he received did specify that he would not be compensated, either in wages or in benefits, for the period of his absence.

13. CP did recognize Mr. Gauvin's overall service for pension purposes, albeit with separate pockets, and for his seniority. The arbitrator can find no valid reason not to do so for Mr. Gauvin's HSA calculation. In any event, the HSA expressly uses the term "active service" which would have excluded Mr. Gauvin's time when absent from any calculation.

14. Had the parties wished somehow to link the HSA to the pension plan, and then create different treatment for the same pockets of service, they could have negotiated that into the HSA. They did not.

15. The arbitrator orders that Mr. Gauvin's HSA calculation be done in accordance with his active service with CP which amounted to twenty-six years. The arbitrator reserves jurisdiction should any issues arise from this award.

December 16, 2016



GRAHAM J. CLARKE
ARBITRATOR