

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

CASE NO. 5237

Heard in Calgary, January 14, 2026

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Union contends that Mr. Figliomeni's cessation of his benefits while off on WCB injury claim is in violation of Article 37 of the collective agreement (CBA), Sections 168 and 239.1 of the Canada Labour Code (CLC) and his human rights.

JOINT STATEMENT OF ISSUE:

On June 29, 2022, Mr. Figliomeni was involved in a workplace incident (fatality) and subsequently went off work on an approved Workers Compensation claim (WSIB). In May 2023 while still on WSIB, the Grievor received notification from the Company of a process change whereby his health benefits would continue for another 52 weeks.

In May 2024, when a claim for his daughter is denied by the insurance carrier, Mr. Figliomeni contacts CP and is told his benefits are now stopped.

Union Position

For all the reasons and submissions set forth in the Union's grievances the Union contends that the disruption of Mr. Figliomeni's benefits is in violation of the CBA, the CLC and his human rights.

June 2023 Mr. Figliomeni starts paying out of pocket to have continued benefits but is advised he does not have to do such and will just create an arrears which will be handled upon his return to active duty.

As noted, in May 2024 when a claim for his daughter is denied by the insurance carrier, Mr. Figliomeni contacts CP and is told his benefits are now stopped.

An email exchanged takes place between TCRC Provincial Legislative Board (PLB) rep Leigh Kittson and the Company and the Union's position outright denied by CP.

As provided the Union's position is that the Company is in violation of the Canada Labour Code, including sections 168 and 239.1, where Mr. Figliomeni per Article 37 is entitled to have his benefits for him and his family during the entire duration of his absence. Mr. Figliomeni as seen in 2023 had no problem that if he needed to pay premiums, he was more than willing to do so to keep his benefits. It is not Mr.

Figliomeni's fault of an on-duty injury has taken place; the Company needs to keep his benefits active in order that this employee can work towards recovery and full return to work. The Company's actions are not helpful to his ongoing recovery, abusive and in violation.

The Union nor the member should be subject to prejudice as a result of the Company's untimely response.

For the foregoing reasons the Union request that the Company abide by the noted provisions of the CLC, reestablish Mr. Gerry Figliomeni's benefits, reimburse him for all out-of-pocket cost and cease from this abusive process of taking an employee's benefits away when needed the most.

Company Position

The Company does not agree with the Union's positions.

The Union suggests the Company has effectively failed to respond to the local grievance in a timely manner and in doing so allegedly prejudiced the Union. While the Company cannot agree with the Union's allegations pertaining to the local grievance response, Consolidated Collective Agreement Article 40.04 is clear in that the remedy for failing to respond is escalation to the next step. Based on the submission of the Union's final step grievance, it is also clear the Union acknowledges Article 40.04 and has progressed to the next step of the grievance procedure. Notwithstanding this, the Company maintains there is no evidence of any prejudice that has occurred.

The Company contends that the Union was aware, that in May of 2023 there was a process change for employees currently on WCB claim, which was communicated to the Grievor and the Union on May 8, 2023.

The legislative requirement for employers to provide employees with the option to continue their benefit coverage while on WCB claim varies by province and currently exists in Ontario and Quebec for 1 and 2 years, respectively. In 2023, the Company aligned its process to provide 52 weeks of continuation to all employees on WCB claim, regardless of the province (excluding 2 years for Quebec). The Company had communicated this to all employees on an active WCB claim, including the Grievor, that this change was applied going forward, allowing for benefits to be continued for an additional 52 weeks, despite the duration of the employee's WCB leave at the time of this change.

Based on the foregoing, the Company can see no violation of the Collective Agreement, the CLC, nor the Grievor's human rights and as such, the grievance is respectfully declined.

Further, there are no provisions in the Collective Agreement for submission of a grievance encompassing a request for the Company to cease a process. The MOS establishing CROA&DR clearly indicates that a dispute must be progressed through the grievance process and CROA 4557 case law supports that position. The Union's request for ceasing a process under the guise of an individual employee's grievance is a further attempt to seek relief for an allegation of multiple disputes without progressing each through the grievance process.

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

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

There appeared on behalf of the Company:

F. Billings – Director, Labour Relations, Calgary
L. Bieliauskaite – Benefits Specialist, Calgary

And on behalf of the Union:

K. Stuebing – Counsel, Caley Wray, Toronto
D. Psychogios – General Chairperson, CTY-E, Montreal

AWARD OF THE ARBITRATOR

Background Facts, Issue & Summary

[1] As noted in the JSI above, this dispute concerns the provision of benefits to the Grievor while on an approved workers' compensation leave.

[2] The facts which form the basis of this Grievance are undisputed and can be summarized briefly.

[3] The Grievor began his career with the Company on February 28, 2011 as a Conductor. He was based in Ontario.

[4] On June 29, 2022, the Grievor was involved in a workplace incident and went off work on an approved Workers' Compensation Benefits leave ("WSIB" leave, in Ontario).

[5] Currently, the time period under *provincial* workers' compensation legislation whereby employers are to provide employees with the option to continue their benefit coverage while on a workers' compensation leave varies province by province.

[6] Given that reality, in 2023, the Company desired to align its process across the country regarding benefit entitlement, to provide for 52 weeks of continuation to all employees on a workers' compensation leave, regardless of province (and excluding the 2 years required for Quebec).

[7] To that end, the Company communicated its position to its employees who were on active WCB claims that this process would be implemented, and provided an additional 52 weeks of coverage at the time of the change.

[8] On May 8, 2023, the Grievor was informed by the Company that it intended to institute this process change. The Grievor was advised he would have his health benefits continued for a further 52 weeks, after which his benefits would cease. In June of 2023, the Grievor attempted to pay for his continued benefits himself and provided a cheque to the Company. He was advised that was unnecessary, as an arrears account would be created which would be handled on his return to duty.

[9] The Grievor became aware the Company had implemented its change and terminated his benefits when his daughter was denied coverage for a prescription just

over a year later, on May 23, 2024. The Union then filed this Grievance alleging that the Grievor was entitled to the continuation of his benefits while on his approved leave and that the Company was barred from terminating such benefits.

[10] The Company relied on the Operational Policy Manual for the WSIB (Ontario), which states:

The worker is considered an employee of the accident employer for one year after the date of injury.

If employers were contributing to their workers' employment benefits at the time of an injury, they must continue to contribute for up to one year after the injury for all work absences due to the injury. Also, workers continue to pay their contribution for employment benefits, if any, while they are absent from work.

[11] That manual also states “[t]his policy applies to federal undertakings just as it does to all other employers”.

[12] However, that Manual *also* states that it applies “to decisions made on or after January 1, 2023, for accidents on or after January 2, 1990”. The WSIB’s decision to accept the Grievor’s claim was not made on or after January 1, 2023. By that point in time, the Grievor was already on a WSIB leave.

[13] That version of the Manual does not therefore apply to this Grievor.

[14] The Union argued the Company’s position violated the *Canada Labour Code* and the Collective Agreement. The Company maintained it was acting consistently with its obligations and that the change was to establish consistency across jurisdictions for how benefits are managed.

[15] The issue between the parties is whether Section 239.1 of the *Canada Labour Code* requires the Company to extend the Grievor’s benefits beyond what is required by provincial legislation, which is time-limited.

[16] For the reasons which follow, the Grievance is upheld.

[17] The WSIB Operations Manual supplied by the Company does not apply to this Grievor. In any event, section 239.1 of the *Canada Labour Code* applies to the Company. That section acts to prohibit the Company from terminating the Grievor’s benefits or

imposing a time limit for how long those benefits will be maintained. It is a floor beneath which the parties cannot contract.

[18] However, that section does not prevent the Company from seeking payment for the employee's contribution to those benefits.

Analysis and Decision

Arguments

[19] The Union argued Parliament intended to apply a minimum standard in Part III of the *Code*, which includes s. 239.1. It argued that was a "floor" beneath which the parties cannot contract. It argued the words used by Parliament in section 239.1 are clear and unequivocal, so it is those words which should play a "*dominant role*" in an interpretation process. It argued the phrase "*shall accumulate*" requires the Company to continue the benefits of injured employees, although employees must contribute to those benefits, if required. It also pointed out that section 239.1 overrides other parts of the *Code*, pointing to section 168(1). That section provides that the *Code* applies "*notwithstanding any other law or any custom, contract or arrangement*", but that a more favourable benefit would not be ousted. It argued that section and the principle of paramountcy supports the application of the federal legislation. It argued there is no ability in that legislation for the Company to "*discontinue an employee's benefits while off work due to a work-related injury*" (at para. 32). It argued that the plain meaning of those words that benefits continue is consistent with the scheme of the *Canada Labour Code*. It argued section 239.1 is to "*serve to protect and preserve a worker's employment while they are absent from work due to a work-related illness or injury and that the worker does not suffer negative consequences*". It argued Parliament has recognized that employment benefits are an "*integral part of the employment relationship*". The Union also pointed out its interpretation was accepted and applied in *Kingsway Transport v. Teamsters, Local 91* 2012 CanLII 20111.

[20] The Company argued that it has determined that benefits continuation for worker's compensation issues was not being administered consistently within its organization. It argued it worked "*extensively and completed a thorough process review and established a consistent process to provide one year of benefits continuation across all provinces*

(except for Quebec being provided with two years of benefits...). It argued its approach meets the minimum provincial requirements where continuation of benefits is required, and in effect gives those without a legislative requirement greater benefits. It pointed out that the Ontario WSIB Operations Manual supports a one-year timeline. It argued it extended coverage for those employees on a WCB claim by an extra 52 weeks when it implemented its policy. It argued it has gone “*over and above*” what is required by the WSIB for this Grievor. It argued that under provincial legislation, its obligation is time-limited. Once that time expires, it argued its obligation ceases. It argued this issue was argued in **AH891**; and that by the benefit provider provisions, an employee must be actively at work to receive benefits. It argued there was no collective agreement provision which would provide indefinite benefits to employees on WCB claims. It argued those provisions were negotiated between the parties and there is no clear and unequivocal language which would extend benefits. It argued no human rights violations have occurred. It further argued this Arbitrator did not have jurisdiction to order the Company to provide benefits beyond what its insurer plan or statutory limits require.

Decision

[21] The principles to be applied in interpreting legislation have been comprehensively outlined in **CROA 4884**. For the purposes of this expedited process, those principles will not be repeated, but are to be considered as adopted here.

[22] Arbitrators are empowered to interpret legislation which applies to employment, which includes the *Canada Labour Code* and any provincial employment legislation. That principle is well-settled.

[23] As noted in **CROA 4884**, the goal of statutory interpretation is to determine Parliament’s objective meaning. The primary method by which that is accomplished is to give the words used their grammatical and ordinary meaning, if no specialized meaning is evident. That goal is accomplished by not only considering the words used by the legislature, but also by considering the object and scope of the Act, and the application of various “*canons of construction*” or principles which aid an Arbitrator in that task. For example, it is assumed legislators say what they mean, and mean what they say. All words

are to be given meaning, and an interpretation is to be preferred which allows the Act to work together harmoniously, and consistently with its object and scope.

[24] The Company relied on **AH685** for those principles. It should be noted that the Arbitrator who resolved **AH685** may not have been made aware of the Alberta Court of Appeal's decision in *AUPE v. AHS* 2020 ABCA 4, which had been issued four months earlier. The Court of Appeal's discussion of interpretation principles for collective agreements in that case have overtaken the discussion in *Gourmet Baker Inv. v. UFCW, Local 832* [2004] M.G.A.D. No. 49, relied upon in **AH685**. The Court of Appeal's directions are binding.

[25] Section 239.1 states:

Benefits Continue

(8) The pension, health and disability benefits and the seniority of an employee who is absent from work due to work-related illness or injury shall accumulate during the entire period of the absence.

Contributions by Employee

(9) If contributions are required from an employee in order for the employee to be entitled to a benefit referred to in subsection (8), the employee is responsible for and must, with a reasonable time, pay those contributions for the period of any medical leave of absence unless, at the commencement of the absence or within a reasonable time after, the employee notifies the employer of the employer's intention to discontinue contributions during the period.

Contributions by Employer

(10) An employer who pays contributions in respect of a benefit referred to in subsection (8) must continue to pay those contributions during an employee's medical leave of absence in at least the same proportion as if the employee were not absent, unless the employee does not pay the employee's contributions, if any, within a reasonable period of time.

...

[26] Subsection (11) provides that benefits do not "*accumulate*" for an employee for whom "*contributions have not been paid as required*" by the above two subsections.

[27] The Grievor has never advised the Company that he intended to discontinue contributions during his leave as contemplated by subsection (10).

[28] In fact, he attempted to make those contributions when advised of the Company's position in the Spring of 2023, but was told that was unnecessary and that an accounting would occur when he returned.

[29] The Union relied on Section 168(1.1) to support its argument of benefit entitlement even where the collective agreement is silent. Part III of the *Canada Labour Code* is titled "*Standard Hours, Wages, Vacations and Holidays*" contains section 168(1.1). That section refers to benefits which are "*at least as favourable*" as those found in Divisions II, IV, V and VIII. However, section 239.1 is not located in any of those Divisions. Section 239 is located in Division XIII, titled "*Medical Leave*". The Union's argument is therefore not persuasive.

[30] However, even without the support of section 168(1.1), the Union's argument is compelling based on section 168(1); the jurisprudence interpreting section 239.1; and the principles of paramountcy.

[31] Turning first to the jurisprudence, the Union maintained this issue has already been determined in that jurisprudence. The Union relied on the reasoning in *Kingsway Transport*.

[32] That decision was issued in 2012. In *Kingsway*, it was not disputed that the 62-year-old grievor "*cannot work and has virtually no prospect of working again*" (at p. 13). He had been off work for more than 16 years. The employer had dismissed him as it argued it had "*just cause*" because of frustration of contract, given that he was unable to return to work. The union in *Kingsway Transport* also made similar arguments to those made by the Union in this case, namely that section 239.1 was clear, ambiguous and was intended to protect employees injured in the workplace, consistently with the object and scope of the *Code*. It was argued section 239.1 prevented the employer from dismissing the grievor. In that case, the Union also argued the collective agreement contemplated retention of employees absent due to illness or injury. In that case, the employer defended its position on the one year time limit contained in provincial worker's compensation legislation, as has the Company in this case.

[33] At page 14, the Arbitrator stated:

In my view, Section 239.1 indicates a clear intention to protect the employment status and benefits of workers who are injured on the job. Those protections are not subject to a time limit, as are the protections in Section 239 applicable to injury or illness not originating in the workplace. Simply put, the employer cannot dismiss a worker “because of absence from work due to work-related illness or injury”. Further subsections (5) and (7) [currently (8) and (10)] of Section 239.1 address the employee’s health and disability benefits, pension and seniority during this type of absence. Despite the awkward structure of the word “accumulate”, those subsections clearly intend to preserve an employee’s access to pre-absence health and disability benefits, as well as requiring continuation of employer benefit and pension contributions during the absence. In addition, pension credits and seniority continue to accrue. I agree with the decision in the Overland case that these statutory provisions must override any restrictions in the collective agreement, as exist here ... in the requirement that employees be at work some time during the month for which contributions are made. (emphasis added).

[34] The *Overland* case was a reference to an unreported decision: *Re Overland Transport and Teamsters Local Union 938*, from 2009, which was summarized by the Arbitrator at page 11. According to the summary of that decision in *Kingsway Transport*, *Re Overland* considered a situation where a collective agreement clause also included a requirement the individual be at work during the month benefit contributions were made. That is a similar argument to that made by the Company in this case, regarding the impact of the limitations of its existing insurance plan.

[35] However, in *Overland*, the terms of the collective agreement did not carry the day or override the provisions of the legislation.

[36] The Arbitrator who resolved *Re Overland* was quoted in *Kingsway Transport* as stating that the subsections which are currently (8) and (10) [*then (5) and (7)*] indicate that:

...the intention of Parliament is to maintain the status quo preceding the absence in issue from work” and that “the statutory notice that health and disability benefits ‘accumulate’ in section 239.1(5) [now (8)] of the Code must mean accumulate in the sense that such benefits continue without interruption and without diminution for each day of absence”. (emphasis added)

[37] The arbitrator in *Kingsway Transport* then stated the conclusion in *Re Overland* was that “...for employees absent due to work-related illness or injury, the Code’s requirements override the eligibility criteria in the collective agreement, including the requirement to be at work during the month” (emphasis added). He then applied that reasoning.

[38] According to that reasoning, whether or not the specifics of a benefit plan are incorporated into a collective agreement is not determinative, as the parties are unable to contract out of the protections which are provided by section 239.1 for workplace injuries in that agreement, in any event.

[39] The Company was unable to offer any jurisprudence which contradicted the interpretation applied in *Kingsway Transport*.

[40] The Company relied on **AH891**, but while that Award addressed several issues involving benefits, it did not consider the type of dispute which is currently before this Arbitrator.

[41] There is no *stare decisis* in labour arbitration. Decisions of other Arbitrators may be persuasive – depending on the robustness of the reasoning – but they are not binding.

[42] When legislative interpretation is at issue, an Arbitrator must be satisfied with the analysis which led to a particular result in the jurisprudence; and must be satisfied that interpretation is correct.

[43] Upon a close review of the jurisprudence which has already interpreted this section and addressed many of the arguments made by the parties; and applying the modern principle of interpretation, the Union’s arguments are persuasive. The Company’s position is based on applying provincial legislation but ignoring its obligations which exist in the *Canada Labour Code*. As determined in *Kingsway Transport*, applying *Re Overland v. Teamsters Local 968*, section 239.1 of the *Canada Labour Code* does not provide to it that freedom.

[44] *Kingsway Transport* determined that Parliament intended there to be a supremacy in Section 239.1, meaning the parties cannot contract out of those protections in their

collective agreement; they cannot contract “*below*” those provisions, although section 168(1) allows the provision of more favourable benefits.

[45] *Kingsway Transport* determined that conclusion was consistent with Parliament’s intentions seen in the object of the *Code* in section 239.1, which was to protect “*the employment status and benefits*” of workers who are injured in the workplace. The reasoning in that case is robust and is consistent with the principles of statutory interpretation, which are applicable.

[46] Upon close review of the wording in Section 239.1, the “*clear intention*” found in *Kingsway Transport* is evident. While the phrasing may be “*awkward*” in using the word “*accumulate*”, as noted in *Kingsway Transport*, the object is protection of workers rights. Subsection (8) is titled “*Continuation of Benefits*”. That section states that the benefits of an employee “*shall accumulate*” during the “*entire period*” of the absence.

[47] Parliament has not included a time limit to that obligation, as have provincial jurisdictions. In fact, the use of the phrasing of benefits continuing for the “*entire period*” contemplates that the obligation does not end until that individual is no longer absent from work. That result is consistent with subsection (10), which requires that the employer continue to pay whatever contributions it had been paying for those benefits “*as if the employee were not absent*”. Subsection (9) contemplates the employee’s own contributions, which the Grievor was willing to make, in this case.

[48] Upon applying the modern principle of interpretation to section 239.1, the plain and ordinary meaning of the words requires the Company to maintain benefits during a work-related injury during the “*entire period*” of the absence, in the same proportion of cost that it had been incurring at the time of the absence.

[49] The Company argued it was entitled to rely on provincial legislation. That argument is not compelling. As a railway, the Company’s operation is a federal undertaking and is subject to the *Canada Labour Code*: section 2(b).

[50] To the extent that provincial legislation would conflict with federal obligations under that statute, the doctrine of paramountcy to the federal legislation would apply: *Bank of Montreal v. Hall* [1990] 1 S.C.R. 121. While the Court in *Bank of Montreal* recognized

there could be “*spillover*” between jurisdictions (in that case in the area of banking), it determined that this spillover could not “*ground a conclusion that that legislation is ultra vires as interfering with provincial law where the matter concerned constitutes an element of federal legislative competence*” (at p. 123).

[51] The Court went on to state:

Dual compliance is impossible when application of the provincial statute can fairly be said to frustrate Parliament’s legislative purpose (at p. 124).

[52] In the words of the Supreme Court - and like the issues in *Bank of Montreal* - section 239.1 is “*integral to, and inseparable from the legislative scheme*”, in this case being the *Canada Labour Code* (at p. 124).

[53] While the Company focused on its provincial obligations, it has done so to the exclusion of its federal obligations under the *Canada Labour Code*. It is those legislative obligations which govern.

[54] Given the federal legislative competence which Parliament enjoys in the area of the employment relationships which exist on the railroads; and the Supreme Court of Canada’s decision in *Bank of Montreal*, it would be illogical and unreasonable to suggest that provincial legislation surrounding one aspect of that employment could oust the intentions of Parliament which are expressed in section 239.1.

[55] The federal legislation governs the elements of the employment relationship on the railroads, which are a federal industry, even though the Company may also be impacted by provincial competency in the area of worker’s compensation. While those obligations may be different than what the Company’s own internal plan allows or even what the collective agreement dictates, there is no exclusion from the legislative obligations imposed by the *Canada Labour Code*, on that basis: section 168. To apply the provincial legislation as urged by the Company would serve to “*frustrate Parliament’s legislative purpose*” behind section 239.1.

[56] That impact also cannot be ousted by the parties in their own collective agreement, or by the Company’s insurance arrangements for benefits.

[57] While the Company may desire internal consistency across the country, any review process and development of a position regarding the provision of benefits must be consistent with the Company's legislative obligations federally.

[58] The Grievance is upheld.

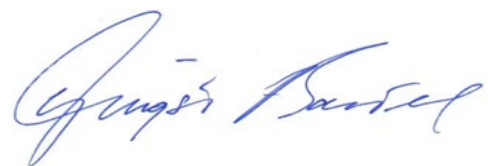
[59] An Arbitrator has a broad jurisdiction to craft an appropriate remedy where a grievance is upheld. The following remedy is ordered:

- a. A declaration will issue that the Company's proposed "*process change*" for the provision of benefits to the Grievor is in breach of its obligations under the *Canada Labour Code*;
- b. The Company is hereby directed to maintain the Grievor's benefits in accordance with its obligations under section 239.1; and
- c. The Grievor is to be made whole for all of his losses.

[60] The matter of the compensation owed to the Grievor under (c) above is remitted to the parties, who are usually able to resolve such issues. However, jurisdiction is reserved for any remaining issues regarding that amount, if the parties are unable to resolve that issue. In that case, either party can approach the Office, on notice to the other party, and request that matter be scheduled at a CROA Session over which I preside. The Office is directed to schedule that dispute as a matter of priority.

I retain jurisdiction to address any questions regarding remedy as noted above; and for any questions relating to the implementation of this Award. I also remain seized to correct any errors; and to address any omissions, to give this Award its intended force and effect.

April 14, 2026



**CHERYL YINGST BARTEL
ARBITRATOR**