AH891-S

IN THE MATTER OF AN ARBITRATION UNDER THE *Canada Labour Code, RSC 1985, c L-2.*

BETWEEN:

Teamsters Canada Rail Conference

(TCRC)

-and-

Canadian Pacific Kansas City Railway

(CPKC)

Did the parties negotiate a lifetime drug cap for new employees?

Arbitrator: Graham J. Clarke
Date: November 7, 2025

Appearances:

TCRC:

K. Stuebing:	Legal Counsel, CaleyWray
D. Fulton:	General Chairperson, TCRC CTY West
G. Lawrenson:	General Chairperson, TCRC LE West
J. Hnatiuk:	Vice General Chairperson – TCRC CTY West
D. Psichogios:	General Chairperson – TCRC CTY East

CPKC:

I. Campbell:	Legal Counsel, Fasken
G. Round:	Legal Counsel, Fasken
T. Gain:	Legal Counsel, CPKC
F. Billings:	Director, Labour Relations

Arbitration held via videoconference on October 15, 2025.

Award

BACKGROUND

1. On October 18, 2024, the arbitrator issued AH891[1] which had examined 6 issues arising from collective agreement (CBA) article 37 (benefits). Since that time, the parties have continued to try to resolve the remaining issues found in their Joint Statement of Issue (JSI).

2. However, from the start of the arbitration, they agreed they would require testimony for one issue relating to an alleged oral agreement for a $200,000 lifetime drug maximum cap (Cap) for new employees.

3. On Monday November 2, 2025, CPKC advised that the parties had resolved the other remaining issues and authorized the arbitrator to issue this award dealing with the Cap. However, the TCRC filed additional materials shortly afterwards to which CPKC objected. The arbitrator provided the parties with an opportunity to comment. Ultimately, those materials, whether accepted or not, did not impact this decision.

4. For the following reasons, the Cap issue remained arbitrable. The evidence disclosed that both parties had genuinely held but diametrically opposed understandings of their Cap discussions. These divergent views preclude any finding of a binding agreement about the Cap.

CHRONOLOGY

5. The extensive Record contains the documentary evidence. The arbitrator will produce only a short chronology of events for context.

6. **May 26, 2018**: The TCRC issued a 72-hour strike notice taking effect at 10pm EST on Tuesday, May 29, 2018.

7. **May 29-30, 2018**: An emergency bargaining session commenced at 7:25 MST on May 29 and continued until 1:20 MST on May 30, 2018. The parties successfully

[1] *Teamsters Canada Rail Conference v Canadian Pacific Kansas City Railway*, 2024 CanLII 99591

negotiated a tentative settlement. During this session, CPKC[2], for the first time, introduced a proposal about the Cap.

8. **May 30, 2018**: The parties finalized their Memorandum of Settlement[3] (MOS). The MOS made no mention of a Cap.

9. **May 30, 2018**: Mr. Douglas Finnson, President of and spokesperson for the TCRC, and Mr. Keith Creel, CEO Canadian Pacific, signed a joint letter[4] noting:

> In regard to the Canadian Pacific and Kootenay Valley Railways Memorandums of Settlement Dated May 30, 2018, the parties agree that any errors or omissions are unintentional, and will be corrected by mutual agreement between the parties.

10. **July 20, 2018**: Ratification of the new CBA. CPKC considered this the starting date for the Cap to apply to all newly hired employees.

11. **July 31, 2018**: CPKC sent the TCRC a letter[5] about the Cap:

> Gentlemen,
>
> The following reflects our discussions during the recent negotiations that culminated in the Memorandum of Settlement dated May 30, 2018 and the attached understanding reached between Mr. Doug Finnson and Mr. Keith Creel to address unintentional errors or omissions during the construct of the settlement document.
>
> **The following application reflects our verbal understanding reached on May 29, 2018 at approximately 23:00 during negotiations when the TCRC Negotiating Committee verbally confirmed its agreement to the Company's proposal to implement a lifetime Prescription Drug cap of $200,000 to employees hired subsequent to this agreement. Unfortunately, during the early morning when the Union constructed the Memorandum of Settlement, the aforementioned was unintentionally omitted and missed in error by the parties prior to signing the document.**
>
> In the application of the foregoing, concurrent with the effective date of ratification of the Memorandum of Settlement, the Company has placed into

[2] For ease of reference, this award will refer to CPKC even though events predate the merger.
[3] TCRC Exhibits, Tab 14.
[4] Myron Becker Will-Say, Tab 3.
[5] CPKC Brief, Tab 32.

> effect the Lifetime Drug Prescription Cap of $200,000 for all employees hired subsequent to July 20, 2018. This "lifetime cap" will also apply to an employee's spouse and/or dependents who are eligible beneficiaries of the CP Employee Benefit Plan.
>
> If you have any questions concerning the application of the forgoing, please do not hesitate to contact me.
>
> (Emphasis added)

12. **December 13, 2018**: Manulife, which would soon be replaced by Sun Life, provided employees with a Benefits Handbook[6]. That document contained no mention of a Cap.

13. **July 3, 2019**: CPKC advised[7] the TCRC of a benefit carrier change from Manulife to Sun Life. CPKC advised that Sun Life would maintain benefit coverage and also provide certain enhancements:

> This letter is in reference to the previously communicated Benefit carrier change CP is undertaking, moving from Manulife to Sun Life, effective January 1, 2020.
>
> **The Company has spent the past several weeks working closely with the carriers to ensure this transition is seamless for employees, while maintaining the benefit coverage conferred by the Collective Agreement and Benefits Policy.**
>
> **Through this process, we have identified certain enhancements that can be offered to employees**. These improvements are:
>
> …
>
> (Emphasis added)

14. **November 2019**: CPKC provided the TCRC with 2 draft benefit booklets, one of which included a Cap for new employees. Emails[8] between CPKC and the TCRC indicated that the latter disputed any agreement about a Cap. For example, the TCRC wrote on December 3, 2019:

> There is no error or omission in said regards. There was no need for discussion as the item no longer existed. Further in those 16-months you have noted, we went through an entire Collective Agreement and past MOS, Awards, and 2018

[6] CPKC Brief, Tab 14.
[7] CPKC Brief, Tab 27.
[8] TCRC Documents, Tab 16.

> MOS, and this was never shown as part of anything based on the fact all believed and rightfully so, it was a dead issue.
>
> Is it your position that you have implemented and/or will be implementing something that was not agreed upon during bargaining and is not part of the CCA.

15. **January 2020**: CPKC provided employees with two different Group Benefits booklets, one for employees hired before July 20, 2018[9] and the other for those hired after July 20, 2018[10].

16. **January 24, 2020**: The TCRC filed multiple grievances[11] contesting the Cap.

17. **June 11, 2020**: The TCRC filed a step 3 grievance.

18. **August 10, 2020**: CPKC responded[12] to one of the TCRC's Step 3 grievances:

> This is in response to the aforementioned Step III grievance submitted on behalf of Division 355 – Calgary, AB.
>
> The Union allege the Company is attempting to implement a change they could not achieve during bargaining and are in violation of the Consolidated Collective Agreement and the Canada Labour Code.
>
> The Company cannot agree. The Union received a message from the Company on July 31, 2018 explaining what was discussed at the bargaining table regarding the implementation of a $200,000 drug lifetime maximum. This message clearly addresses unintentional errors or omissions during the construct of the settlement document and the verbal understanding reached on May 29, 2018 during negotiations when the TCRC verbally confirmed its agreement to the Company's proposal to implement a lifetime Prescription Drug cap of $200,000 to employees hired subsequent to the agreement.
>
> The Union never responded to the message sent by the Company dated July 31, 2018. To file a Grievance over 17 months later is untimely and procedurally defective. You have improperly filed your grievance and it is respectfully declined.

[9] CPKC Brief, Tab 15.
[10] CPKC Brief, Tab 16. The July 20, 2018 date corresponds to the ratification date.
[11] CPKC Brief, Tab 33.
[12] CPKC Brief, Tab 35.

As an additional comment, failure to specifically reference any argument or to take exception to any statement presented as "fact" does not constitute acquiescence to the contents thereof. The Company rejects the Union's arguments.

The Union has further stated a desire to reserve the right to allege a violation of, refer to and/or rely upon any other provisions of the collective agreement and/or any applicable statutes, legislation, acts or policies. In accordance with the grievance procedure, the Company will be prepared to proceed only on the issues that have been properly advanced through the grievance procedure.

THE JSI

19. The parties' JSI described the two Cap related issues for this supplemental arbitration:

1. Preliminary Objection

1. $200,000 Lifetime Drug Maximum

Company Position:

On July 31, 2018, the Company wrote to the TCRC General Chairmen to confirm the parties' verbal understanding reached on May 29, 2018 during the 2017-2018 round of bargaining that a lifetime prescription drug cap of $200,000 would be implemented for employees hired subsequent to the Collective Agreement coming into force.

The Union did not object or respond to the Company's letter until January 23 (West) and 24 (East), 2020 at which time joint grievances were filed.

The Company objects to the arbitrability of this item on the basis that the Union never raised an objection nor were its grievances submitted within the timelines prescribed by the Collective Agreement. This Union is therefore estopped from grieving the issue[13].

Union Position:

The Company's preliminary objection represents a completely new position which is untimely, has no merit and must be dismissed.

The parties concluded collective bargaining with a Memorandum of Agreement on May 30, 2018 that did not include any reference to a "lifetime drug prescription cap of $200,000 for all employees hired subsequent to July 20, 2018."

[13] CPKC advised at the October 15, 2025 arbitration that it would not pursue its estoppel argument.

Mr. Becker's unilateral July 31, 2018 letter was not mutually agreed. It does not form part of the Collective Agreement nor was it incorporated into the Consolidated Collective Agreement.

The Company did not seek the Union's mutual agreement nor otherwise act on its July 31, 2018 letter until the November 2019 notice to employees. To be sure, the Union did not mutually agree to a "lifetime drug prescription cap of $200,000 for all employees hired subsequent to July 20, 2018."

The Union initiated a timely grievance in response to the new Sun Life Group Benefit Plan book, challenging the inconsistencies between this book and the parties' mutually agreed Collective Agreement language.

The Company's objection was never raised in its grievance correspondence in this matter. The Company has waived this preliminary objection by its conduct in this matter.

There is nothing preventing the arbitrability of this grievance as processed through the grievance procedure.

2. Merits: Did the parties agree to a Cap?

1. $200,000 Lifetime Drug Maximum for TCRC represented employees hired on or after July 20, 2018.

Union Position:

As outlined in our respective grievances, including 381-546, 500.03.17712, and R106- 355.17711, there is no provision for the unilateral imposition of a lifetime drug maximum for employees hired after July 20, 2018. All RTEs have the same benefits regardless of entry to service.

Company Position:

Notwithstanding the preliminary objection above, the parties reached an understanding on May 29, 2018 at approximately 23:00 in which the TCRC Negotiating Committee verbally agreed with the Company's proposal to implement a lifetime prescription drug cap of $200,000 for employees hired subsequent to this agreement. The agreement is referred in a letter from Myron Becker on July 31, 2018.

EVIDENCE

20. The parties prepared will say statements and/or affidavits for the four witnesses' evidence in chief and agreed to proceed directly to cross-examination. The evidence showed that the parties had diametrically opposed views whether they reached an agreement about the Cap.

TCRC testimony

Douglas Finnson

21. In his affidavit, Mr. Finnson provided his recollection of the Cap discussions:

> 21. After caucusing, the Union was ready to meet with the Company at around 2250 that evening.
>
> 22. We made a counter proposal on a variety of issues. In respect to the Company's proposed lifetime benefit cap I said we could consider the Company's position, but we needed the Company to provide a letter detailing the soft cap.
>
> 23. We met several times through the night after that discussion. I do not recall Mr. Becker raising CP's proposed lifetime benefits cap again. At no point did the Company provide a letter or clarify the comments related to a purported cap or soft cap.
>
> …
>
> 25. The Company's newly proposed benefits cap was not discussed at this time. At no time did we return to this subject.
>
> 26. When engaged in bargaining, I often mark a checkmark beside items to which the parties agree. I have no checkmark in my notes beside the proposed benefits cap. I have no notes that indicate that the Union ever agreed to a benefits cap.

22. The following points arose from Mr. Finnson's cross-examination and re-exam:

- He confirmed that CPKC raised the Cap issue for the first time on May 29, 2018.
- Checkmarks in his notes signify when the parties agreed on a matter.
- He did not make notes when he was speaking and providing the TCRC counterproposal.
- He agreed Mr. Edwards had a checkmark in his notes beside the Cap but was not sure what he meant.
- He had no recollection of the meaning of the wording "deep in file" in Mr. Edwards' notes.
- He did not know if anyone responded to Mr. Becker's July 31, 2018 letter which included the wording "…the Company has placed into effect the Lifetime Drug Prescription Cap of $200,000…" but indicated he hoped someone would have responded to advise CPKC they were wrong.
- In re-exam, he agreed that he did not know who would be considered "new hires" under the CPKC Cap proposal and that was why he required more information.

Wayne Apsey

23. Mr. Apsey, who sat on the TCRC's bargaining committee, provided his recollections of the May 29-30 events in his affidavit:

> 9. After the Union caucused, we returned to respond to the Company's latest proposals at 2253. On behalf of TCRC, Doug Finnson stated that he would go through things which Mr. Becker had raised. Mr. Finnson addressed Mr. Becker's proposed $200,000 cap and soft cap, stating that the Union "needs a letter on this." The parties continued to discuss other items including vision benefits (no change in prescription to get new glasses needed) and life insurance benefits increased by $1000. The parties then broke again at 2315 hours.
>
> 10. I understood Doug Finnson's request during the 2253 hours discussion to be reasonable and necessary. If this was to be a "soft cap," the terms of this soft cap need to be detailed for the Union to agree. Specific terms would need to designate who the soft cap pertains to, when a cap may be exceeded, in what circumstances, etc. A letter detailing these points was needed to review and assess CP's proposed cap and whether the terms would be agreeable.
>
> 11. The Company's newly proposed benefits cap was not discussed at any time after the 2253 discussion. At no time did CP provide the letter that Mr. Finnson had requested for the Union's consideration.
>
> …
>
> 16. TCRC did not receive a letter outlining the terms of the soft cap. There was never any firm proposal and the Union never agreed to this cap. The cap was not spoken to by CP at any time after the discussion at 2253 on May 29. A lifetime cap on benefits is not in the MOS because it was not part of the final agreement.

24. In cross-examination, Mr. Apsey added:

- His notes at page 9[14] indicated that Mr. Finnson had asked for a letter about the soft cap since nothing is decided until they have something in writing.
- Mr. Apsey, when being referred to Mr. Edwards' notes and the phrase "write up soft cap deep in file," did not recall what "deep in file" might have meant.
- He could not say why Mr. Edwards had placed a checkmark in his notes dealing with the benefits discussions.
- He agreed that CPKC had stated that a cap was in place in its July 31 letter and noted that CPKC's current explanation differed from the letter's reference to

[14] Apsey affidavit PDF page 14/30.

"unintentionally omitted and missed in error by the parties prior to signing the document."

- He had no knowledge if anyone at TCRC had ever responded to the July 31 letter but called it a dead issue in any event.

Greg Edwards

25. Mr. Edwards, who also sat on the TCRC's bargaining committee, provided in his affidavit his recollections about the Cap discussions:

> 9. After the Union caucused, we returned to respond to the Company's latest proposals at 2254. On behalf of TCRC, Doug Finnson responded to proposals that Mr. Becker had raised. Mr. Finnson addressed Mr. Becker's proposed $200,000 cap and soft cap, requesting that the Company "write up soft cap deep in file." The parties continued to discuss other items including vision benefits (no change in prescription to get new glasses needed) and life insurance benefits increased by $1000. The parties then broke again.
>
> 10. I understood Doug Finnson's request during this discussion to be reasonable and necessary. If this was to be a "soft cap," the terms of this soft cap need to be detailed for the Union to agree.
>
> 11. The Company's newly proposed benefits cap was not discussed at any time after the 2254 discussion. CP did not provide the letter that Mr. Finnson had requested for the Union's consideration. That issue did not arise again for the remainder of negotiations. As such, I understood that the issue had been dropped.

26. In cross-exam and re-exam, Mr. Edwards noted:

- His notation "write up soft cap deep in file" meant that Mr. Becker had stated he would give a letter about the soft cap which would not be part of the CBA.
- Mr. Finnson asked for a letter about the Cap.
- They wanted a letter because if they were to agree to any restrictions for new hires then they would want it to be clear for everyone.
- He noted his checkmark for benefits was on the left, as opposed to other checkmarks he placed on the right side of his notes. This signified an incomplete item.
- Any agreement would depend on the content of the requested letter about the soft cap.
- His interpretation of the July 31 reference to "placed in effect" meant that CPKC had put this into effect unilaterally.
- He could not recall if anyone had responded to CPKC about the July 31 letter.
- He had concerns about the suggestion that the Cap should be kept secret; that could lead to duty of fair representation complaints. If a Cap would be added, the TCRC needed it to be part of any public agreement.

- He had no discussions about a side letter regarding the Cap.
- In re-exam he noted that the MOS did not refer to the Cap since it had never come up again at negotiations after the TCRC had requested a letter.

CPKC testimony

Myron Becker

27. In his Will-Say statement, Mr. Becker, at the time CP's Chief Labour Officer and lead negotiator, described the parties' discussions about the Cap:

> 12. At approximately 7:25 pm MST on April 29, 2018, CPKC delivered an offer to the Union. As part of its offer, CPKC included a new proposal for a $200,000 lifetime cap in respect of prescription drugs and dental benefits for new Union members hired after ratification of the new CBA ("New Hire Lifetime Cap"). This was the first time in 2017 – 2018 negotiations that CPKC had raised the issue of the New Hire Lifetime Cap.
>
> 13. In the discussions regarding CPKC's New Hire Lifetime Cap proposal, CPKC expressly referred to the then-$60,000 lifetime cap on health and dental benefits applicable to yard workers and trainpersons employed at Canadian National Railway.
>
> 14. The parties took a break to allow the Union to discuss the terms of CPKC's counterproposal, including the New Hire Lifetime Cap.
>
> 15. The parties returned to the table at approximately 10:55 pm MST to discuss the Union's counter-proposal. As part of its counter-proposal, the Union expressly agreed to CPKC's proposed New Hire Lifetime Cap in respect of only prescription drugs provided it was a "soft cap", meaning that CPKC would use its discretion to permit employees to exceed the cap where warranted in exceptional situations (e.g. a life threatening situation or unforeseen medical circumstances, etc.). The Union's refusal to include dental in the New Hire Lifetime Cap was based on the fact that the CBA already contained an annual maximum in respect of dental benefits.
>
> …
>
> 19. In discussions regarding the terms of the 2018 MOS, Mr. Finnson expressly stated that the Union did not want reference to the parties' agreement on the New Hire Lifetime Cap in the 2018 MOS because it did not affect any current employees who were going to participate in the ratification vote and could potentially negatively impact ratification of the 2018 MOS. In other words, because the New Hire Lifetime Cap only affected employees hired after ratification, the Union thought it would be better politically not to reference the New Hire Lifetime Cap agreement in the 2018 MOS.

> 20. CPKC agreed not to reference the New Hire Lifetime Cap in the 2018 MOS but clearly advised the Union that the parties' agreement would be implemented after ratification.

28. The following points arose from Mr. Becker's cross-examination:

- His notes contained no mention of his suggestion that Mr. Finnson asked for the Cap to be excluded from documentation.
- He did not recall the TCRC ever requesting a letter about the soft cap.
- He acknowledged his notes were not comprehensive due to his role as chief negotiator and confirmed no other CPKC attendees took notes.
- He explained that under a soft cap, CPKC could make exceptions for special situations and had done so in the past.
- He agreed that his July 31, 2018 letter did not mention a soft cap, stating it was drafted to provide the TCRC with political protection.
- He did not know that the 2019 Metlife benefits booklet omitted any reference to a Cap.
- He acknowledged that Article 37 of the CBA did not mention a Cap but maintained that a verbal understanding existed.
- He confirmed that subsequent collective agreements did not include a Cap.

DECISION

29. As noted at the beginning of this award, the arbitrator has found the grievances arbitrable and, further, that no enforceable oral agreement ever existed about the Cap.

Timeliness

30. CPKC argued[15] that the TCRC had failed to respect the CBA's time limits for the filing of a grievance:

> 60. On July 31, 2018, CPKC's lead negotiator sent a letter to the Union that set out the terms of the parties agreement to the New Hire Lifetime Drug Cap. The letter advised that, in accordance with the parties' agreement, CPKC would be implementing the New Hire Lifetime Drug Cap for all employees hired after July 20, 2018. The letter expressly asked the Union to contact CPKC with any questions or concerns regarding the letter. A copy of the July 31, 2018 letter as well as the parties' May 30, 2018 agreement with respect to errors or omissions from the 2018 MOS is attached at Tab 32.
>
> 61. The Union did not respond to CPKC's July 31, 2018 letter or file grievances until January 23 and 24, 2020, approximately 16 months after receipt. A copy

[15] CPKC Brief, paragraphs 60-64.

of the Union's grievances in respect of the New Hire Lifetime Drug Cap are attached at Tab 33.

…

64. **It is CPKC's position that the Union's objection to the New Hire Lifetime Drug Cap is inarbitrable on the basis that**:

(a) it was expressly negotiated by the parties in 2018 bargaining; and

(b) the grievances were not filed within the time limits set out in the CCA and are therefore untimely and procedurally defective.

(Emphasis added)

31. For several reasons, CPKC did not satisfy the arbitrator of the inarbitrability of the grievances. The arbitrator does agree, as some of the TCRC witnesses acknowledged, that it would have been preferable to respond immediately to Mr. Becker's July 31, 2018 letter. The current debate could have occurred years ago had that occurred.

32. But the TCRC's failure to respond did not make the grievances inarbitrable.

33. First, CPKC did not provide any evidence that it had started to apply the disputed Cap prior to the change to Sun Life. While Mr. Becker noted that it can take a long time for someone to reach a 200K Cap, this did not demonstrate that CPKC had in fact implemented it.

34. Second, the Manulife Booklet which employees received later in 2018 made no mention of the Cap that CPKC suggested had been put in place. While the benefits situation was evolving in terms of who the carrier would be, nothing in that Booklet provided a reason for the TCRC to file a grievance about a Cap.

35. Third, almost a year after Mr. Becker's letter, CPKC sent the TCRC a letter dated July 3, 2019 advising that it had been able to enhance the current benefits. CPKC made no mention of a Cap applying to more recently hired employees. The arbitrator cannot see how this letter would oblige the TCRC to grieve.

36. Fourth, as soon as CPKC provided the Sun Life booklets to the TCRC, they grieved. Prior to this time, the TCRC had no grounds to grieve since no employees had been prejudiced[16].

37. Fifth, during this general time frame, the parties consolidated multiple collective agreements. But article 37 (benefits) still contained no reference to a Cap in the consolidated collective agreement.

38. Sixth, even if the arbitrator has erred in the above analysis, this would have been an appropriate case to extend any time limits, as authorized under the *Code*[17]:

> 60(1.1) The arbitrator or arbitration board may extend the time for taking any step in the grievance process or arbitration procedure set out in a collective agreement, even after the expiration of the time, if the arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the other party would not be unduly prejudiced by the extension.

39. The arbitrator accordingly finds the grievances timely.

Did an oral agreement amend the CBA?

40. The parties did not dispute to any great degree the governing legal principles.

Law

41. The TCRC referenced *Ottawa Civic Hospital*[18], in which Arbitrator Weatherill commented on the importance of "positive statements of acceptance by both parties" before an oral agreement can amend the CBA:

> 6 Had the parties executed a formal document amending the collective agreement, that would be binding on them even though the amendments were not to be implemented until some future date. **Absent such a document, however, it is our view that a board of arbitration should proceed with caution in dealing with evidence which seeks to vary the terms of the collective agreement itself. In the absence of positive statements of acceptance by both parties, it is difficult to say that, in the course of negotiations, an effective mutual consent has crystallized, even though the negotiators themselves may be of similar views on the matter**.

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[16] These facts differ significantly from those in *Sofina Food Inc. and UFCW, Local 401*, 2019 CarswellAlta 614.

[17] *Canada Labour Code*, RSC 1985, c L-2

[18] *Re Nurses' Association, Ottawa Civic Hospital and Trustees of the Ottawa Civic Hospital*, 1971 CarswellOnt 881, 22 L.A.C. 325. See also *Millwrights, Machinery, Erectors and Maintenance Union, Local 1460 and Portable Machine Works, Ltd., Re*, 2021 CarswellAlta 2863 at paragraph 32.

(Emphasis added)

42. CPKC relied on Arbitrator Link's award in *Ontario (Ministry of Children and Youth Services) and OPSEU (Coelho), Re*[19] which noted how oral agreements can amend a CBA:

> 33 The caselaw submitted by the two parties lays out a set of applicable principles that are useful to assess whether a document or a set of proposals exchanged during negotiations between an employer and a union have crystallized into a legally binding agreement. My reading of these cases has yielded the following principles:
>
> > a. The classical principles of contract law apply: offer, acceptance and consideration. The key determinant is whether the parties have reached a common agreement, a meeting of minds, on all of the substantive issues on the table. **An agreement is reached at the moment when all of the substantive matters in dispute have been resolved, there is nothing substantive left to be negotiated, and the parties have intended to achieve resolution of the matter on these terms**. (*TransAlta Utilities Corp.*, supra.; *Architectural Mouldings Ltd.*, supra.). The test is objective.
> >
> > …
> >
> > d. **The parties can be bound by oral commitments, as long as the evidence demonstrates that they have unconditionally agreed to settle the substantive issues between them** *(Toronto (City) v. Toronto Civic Employees' Union, Local 416*, [2002] O.L.A.A. No. 531 (Ont. Arb.) (Luborsky)). **Reducing the settlement to writing is a procedural, and not an essential, feature of an agreement**. Signatures on a document are usually conclusive that an agreement has been reached, but a binding agreement does not necessarily depend on the presence of signatures. (*Ontario (Ministry of Community and Social Services) and OPSEU (Corbiere)*, Re, [2013] O.G.S.B.A. No. 124 (Ont. Grievance S.B.) (Dissanayake)).

(Emphasis added)

43. The arbitrator must accordingly consider whether the evidence about a Cap contains "positive statements of acceptance by both parties". Similarly, have the parties "unconditionally agreed to settle the substantive issues between them"?

[19] 2013 CarswellOnt 14287.

Analysis

44. CPKC urged the arbitrator to find that the parties reached an agreement with only some minor implementation steps remaining.

45. The arbitrator cannot conclude that the parties entered into a binding oral agreement to introduce a new employee CAP into the CBA. Both parties noted the challenging environment in which they found themselves when trying to hammer out a last-minute settlement to avoid a strike. CPKC first raised the Cap issue during that intense session.

46. Similarly, as Mr. Becker noted in his evidence, these events occurred 7 years ago. Recollections of events will clearly fade over that time. In such circumstances, arbitrators place considerable reliance on contemporaneous notes and comparable documentation.

47. The arbitrator accepts that Mr. Becker felt treating the Cap issue separately might help ratification. The reference in Mr. Edwards' notes to "write up soft cap deep in file" may reflect this. Two tier wage and benefit regimes can create controversy in labour relations. During his testimony, Mr. Becker clearly felt aggrieved that the TCRC now disputed his understanding of their Cap discussions.

48. Nonetheless, based on the contemporaneous notes and the oral evidence, the arbitrator cannot conclude that the TCRC agreed orally to the Cap. The parties clearly discussed this new issue. But the TCRC wanted more information about the "soft cap" that CPKC had mentioned. CPKC never provided that information.

49. The July 31, 2018 letter makes no mention of a soft cap. Mr. Becker testified that he drafted this letter in a specific way for political reasons.

50. The TCRC's request for soft cap details is not surprising given that a 200K Cap represents an important CBA change. Details about a soft cap may include whether exceptions must be made reasonably. While Mr. Becker testified that in other cap situations CPKC had exercised its sole discretion to make exceptions for special circumstances, the TCRC presumably wanted wording which would make any such determination arbitrable.

51. As AH809-M[20] noted in a different case involving these parties, arbitrators may not always have the authority to resolve disagreements unless authorized by clear CBA language [Footnotes omitted]:

> 59. Parties to a collective agreement frequently include language which obliges them to agree on something. In some agreements, the parties further agree to send any dispute to an outside arbitrator, such as those about the proper salary for a new classification or the content of a job description.
>
> 60. In other situations, however, arbitrators have recognized that they may not have the authority to intervene when the parties have agreed to agree but then fail to do so.
>
> 61. **In the instant case, the parties have not negotiated wording which sends their disagreement about the Process numbers to an arbitrator**. Neither have they agreed that the mileage report alone will determine the numbers. **In short, the parties have not tasked an arbitrator with the authority to decide who is right**.
>
> (Emphasis added)

52. Since the evidence did not support the existence of an oral CAP agreement separate and apart from the MOS, the arbitrator must therefore apply the parties' agreed upon process.

53. They explicitly required that the MOS contain all the mutually agreed items. The MOS made no reference to the Cap. Moreover, for unintentional errors, Mr. Finnson and Mr. Creel agreed explicitly how they would deal with those items. They never addressed the Cap within that mutually agreed process.

54. In short, when applying the legal principles suggested by the parties, the arbitrator cannot find the necessary "positive statements of acceptance by both parties" or that the parties "unconditionally agreed to settle the substantive issues between them".

55. On the evidence, the parties did not agree orally to a Cap.

[20] *Teamsters Canada Rail Conference v Canadian Pacific Kansas City Railway*, 2024 CanLII 18523

DISPOSITION

56. For the above reasons, the arbitrator has concluded that the parties never reached an agreement to add the Cap to the CBA. That issue must be addressed in future negotiations.

SIGNED at Ottawa this 7th day of November 2025.

_____

Graham J. Clarke
Arbitrator