

In the Matter of an Arbitration

BETWEEN:

THE CORPORATION OF THE CITY OF HAMILTON

(THE "CITY")

AND

**CANADIAN UNION OF PUBLIC EMPLOYEES
AND ITS LOCAL 5167**

(THE "UNION")

AND

SZ

(THE "GRIEVOR")

(Gr. of SZ)

HEARING HELD: By video conference on February 1, 2021

BEFORE: Eli A. Gedalof, Sole Arbitrator

APPEARANCES

For the Employer

Daryn Jeffries, Counsel
Kennedy Simpson, Counsel
Ryan Fletcher, Labour Relations
Barb Howe, Payroll/Benefits

For the Union

Ed Holmes, Counsel
Darcie McEarthron, CUPE National Representative
Jay Hunter, CUPE 167 President
Barry Conway, CUPE 5167 Vice President

AWARD

1. This matter arises from the settlement of a September 24, 2019 grievance by Memorandum of Agreement dated December 4, 2020 (the "MOA"). Under the terms of the MOA, I am seized as arbitrator with respect to the interpretation and/or implementation of the agreement. A dispute has arisen between the parties with respect to the terms of the MOA. I convened a hearing on February 1, 2020 and after hearing from the parties, issued an oral ruling with reasons to follow. These are those reasons.

2. The terms of the MOA settle two primary issues: i) the grievor's termination from employment; and, ii) the repayment to the City of a significant overpayment made to the grievor. The MOA includes, among other terms, a requirement that the grievor pay the City back the "net amount" from the overpayment (i.e. the amount received by the grievor not including the taxes withheld at source), and that the City "file amended T4s for 2018 and 2019 to reflect that payment and provide the Grievor with a copy of those amended T4s and a letter explaining what it has done by December 18, 2020". The MOA includes other set offs, to arrive at a global sum which the grievor is required to pay by February 2, 2021.

3. The City issued the grievor an amended T4 by December 18, 2020. The grievor takes the position that the T4 has not been correctly amended, and the Union argues that as a consequence the grievor ought not to be required to pay the City any sum owing until this deficiency has been corrected. The City maintains that it has properly completed the slip as it was required to do.

4. Having carefully considered the parties' submissions, I find that I do not have the jurisdiction to decide whether or not the T4 has been properly amended. That is a matter to be determined under the applicable legislative scheme, presumably by Canada Revenue Agency in the first instance and then if necessary the courts. There is nothing in either the Collective Agreement or the Memorandum of Agreement that would even purport to grant me such jurisdiction. On the other hand, the Memorandum of Agreement does explicitly require the City to issue an amended T4 to reflect the payment made by the Grievor to the City. If an appropriate authority concludes that the T4 has not been properly amended to reflect that payment, then it is well within my jurisdiction to find that the City has breached its obligation under the MOA, and to award the grievor a remedy for that breach. Consequently, I defer the question of whether the City has properly amended the T4 and remain seized under the terms of the MOA to address any remedial issues that arise in the event that an appropriate authority does conclude that the T4 has not been properly amended.

5. In the meantime, the grievor is required under the terms of the Minutes to pay the City the amount owing by February 2, 2021, as provided for in paragraph 4 of the MOA. The ongoing dispute between the parties concerning the T4 does not absolve the grievor of this obligation. As is also provided for in the MOA, if the grievor fails to pay the amount owing as required, the City is entitled to request an Order to pay that it may file with the Court. Absent the requisite payment, I would issue that Order in the usual course.

6. Finally, the MOA also requires that the grievor provide 24 hours' notice of when he intends to drop off the payment. At the time of the hearing and the writing of this Award, that deadline has passed. However, I note that the City has advised that it will accept such notice as timely provided the City receives the notice by 10:00 a.m. on February 2, 2021.

7. I remain seized in accordance with the terms of the MOA.

Dated at Toronto, Ontario, this 1st day of February 2021.



Eli A. Gedalof
Sole Arbitrator