

IN THE MATTER OF AN ARBITRATION

BETWEEN:

MARKHAM PROFESSIONAL FIREFIGHTERS' ASSOCIATION
(“the Association”)

and

CORPORATION OF THE CITY OF MARKHAM
(“the City”)

AND IN RESPECT OF GRIEVANCES OF SAKINA SOMJI

Stephen Raymond Arbitrator

Appearances for the Association:

Tim Gleason	Counsel
Megan Reid	Counsel
Andrew Ireland	President
Nick Inch	Vice-President
Sakina Somji	Grievor

Appearances for the City:

Victoria McCorkindale	Counsel
Vivian Geneski	Sr. Manager, Employee & Labour Relations
Susan Hsiung	Human Resources Business Partner
Kristen Levy	Human Resources Specialist
Chris Nearing	Fire Chief
Ryan Best	Deputy Fire Chief
Rob Garland	Deputy Fire Chief

Appearances for Sakina Somji:

Muneeza Sheikh	Counsel on July 30, 2025
Ahmed Jaffer	Student-at-law on July 30, 2025

An arbitration was held via Zoom on May 9, 2025, and a mediation on July 30, 2025.

AWARD

OVERVIEW and DECISION

1. The City brings a motion seeking a declaration that a binding agreement exists between the City, the Association and, the grievor, Ms. Sakina Somji. The Association acknowledges that it agreed to the terms of a draft settlement, but states that it appears that Ms. Somji did not. At the time of the alleged settlement, Ms. Somji was represented by a well-known human rights and employment lawyer, Ms. Muneeza Sheikh. Ms. Somji attended a mediation on July 30, 2025 with Ms. Shekih and her law student, Mr. Ahmed Jaffer. At that time, Ms. Somji had initiated three pieces of litigation:
 - a. her grievance in respect of accommodation and the termination of her employment;
 - b. a lawsuit against the City and Sun Life in respect of the denial of Long-Term Disability ("LTD") coverage; and
 - c. a human rights application against the City.

Before attending the mediation, the City, the Association and Ms. Somji, through her legal counsel, Ms. Sheikh, confirmed that the goal of the mediation was to attempt to resolve all three pieces of litigation.

2. I was appointed by the City and the Association as the arbitrator of the grievance. A hearing was arranged for May 9, 2025. Just before that date, I and the parties were informed by Ms. Sheikh that she had been retained by Ms. Somji and that she would not be able to attend the hearing on May 9, 2025. Ms. Sheikh sought the agreement of the parties to agree to another date to mediate. A mediation was scheduled for July 30, 2025. I conducted that mediation. Throughout the mediation, all parties understood that a resolution was only possible if all three pieces of litigation were resolved. At the conclusion of the mediation, the parties

agreed to a significant monetary payment with both taxable and non-taxable components as well as a payment in respect of legal fees to be paid in return for a full and final release in respect of all three pieces of litigation. Because of commitments that Ms. Sheikh had to attend to, the full written terms were not agreed to or signed off at that time. On August 5, 2025, Mr. Jaffer wrote to all parties (with a copy to Ms. Sheikh) that the minutes of settlement were acceptable to Ms. Somji and requested one additional clause in the minutes of settlement.

3. Applying the sensible labour relations test as to whether there is a settlement in this matter or not, I find that there was an offer, an acceptance and consideration. The parties had reached a meeting of the minds on all substantive issues. The one additional requested clause sought to bind outsiders to the minutes of settlement to a newly introduced term. The City and the Association, the other two parties, had no authority to bind the outsiders to the requested term. The request for that term, after all the substantive terms had been agreed, cannot undermine or vitiate the settlement. I find, accordingly, that the City, the Association and Ms. Somji have agreed to a binding settlement agreement with respect to all three pieces of litigation.
4. The Association withdrew the grievance on August 28, 2025. The City takes the position that the Association may not unilaterally withdraw the grievance after a hearing date has been held. I disagree. Generally, labour relations are best served, when the party initiating the grievance maintains the unilateral power to end the grievance. Accordingly, if I am wrong about whether there is a settlement, the grievance is now withdrawn and my jurisdiction to address it has ended.

BACKGROUND

5. Ms. Somji was employed by the City as a public education officer in its fire department. Accordingly, she was represented by and a member of the Association. On January 13, 2025, the City terminated Ms. Somji's employment. The Association grieved the termination, as well as an alleged failure to accommodate Ms. Somji. I was appointed by the Association and the City as the arbitrator of that grievance.
6. Before the grievance, Ms. Somji had initiated two other legal proceedings. First, she filed on November 20, 2024, a Statement of Claim against the City and Sun Life with respect to the denial of her LTD claim. Second, she filed on November 22, 2024, an application against the City before the Human Rights Tribunal of Ontario claiming discrimination in her employment.
7. A hearing was arranged in respect of the grievance for May 9, 2025. On May 6, 2025, Ms. Sheikh wrote to the parties and advised that she represented Ms. Somji that she could not attend the hearing and sought their agreement to mediate a resolution of her client's issues.
8. The hearing proceeded on May 9, 2025, to address an outstanding production request and I issued an order in respect thereto. It was also arranged that there would be a mediation on July 30, 2025, and agreed that as mediator I would be retained to mediate all three of Ms. Somji's legal disputes. After May 9, 2025, the agreement that I would mediate all three matters was confirmed with Ms. Sheikh who accepted on behalf of her client, Ms. Somji.

9. The mediation on July 30, 2025 was attended by Ms. Somji, Ms. Sheikh and Mr. Jaffer as well as counsel for the City, and the Association and their respective clients. At the end of the mediation, the City offered to pay a significant settlement amount with allocation of a specific amount to general damages and the remainder to be paid as a retirement allowance and allocation to actual legal fees. Ms. Sheikh and Ms. Somji accepted the offer. At this point, the global amount of the settlement and the allocation of the settlement funds, and the fundamental terms of the settlement were accepted by Ms. Somji, through her counsel, Ms. Sheikh. On that basis, draft Minutes of Settlement were delivered from the City to Ms. Sheikh. She advised that she would review with her client and provide any proposed changes that evening. There was no suggestion that the substantive terms were not agreed to or that additional terms not discussed at the mediation would be proposed. Further, she advised that her office would advise of the exact number for actual legal fees the next day.
10. Later that evening, Mr. Jaffer sent an email requesting two minor changes to the Minutes of Settlement, the first to provide for an allocation to Ms. Somji's RRSP, the second that payment be made within thirty days.
11. The next morning, July 31, 2025, the City accepted the addition of the term with respect to the RRSP but insisted that payment be made within sixty days as it had originally proposed.
12. On August 1, 2025, Mr. Jaffer advised that they needed more time to review the Minutes of Settlement.

13. On August 5, 2025, Mr. Jaffer advised that they had reviewed the Minutes of Settlement and that they are “acceptable to our client”. He further advised that:
- a. “the last change that our client requests is a clause which details that this settlement will have no bearing on her status with the IAFF/OPFFA”;
 - b. Ms. Somji no longer wished to make an RRSP allocation; and
 - c. Provided the amount of actual legal fees.
14. The IAFF/OPFFA refers to the International Association of Fire Fighters and the Ontario Professional Fire Fighters’ Association. Neither of these bodies was present at the mediation nor were they parties to any of Ms. Somji’s three legal disputes. On August 7, 2025, the Association wrote the parties that the IAFF/OPFFA were not parties to any of the proceedings and, accordingly, the late additional clause requested was not one which any of the parties could agree to. As well, the Association requested a copy of the signed Minutes of Settlement.
15. On August 11, 2025, Ms. Somji wrote the parties advised that she was no longer represented by Ms. Sheikh and that she would not sign the Minutes of Settlement.
16. On August 28, 2025, the Association advised that it was withdrawing the grievance.
17. On September 2, 2025, the City advised that it was bringing a motion to enforce the settlement. The parties made written submissions on the motion.
18. The City alleges that there was a settlement, that all the basics of a contract are present and that I should order it to be enforced.
19. The Association makes three submissions on behalf of the grievor and one on its own behalf.

20. First, it states that the grievor takes the position that I have no jurisdiction to determine this matter. The Association specifically does not endorse this position. Second, it states that the grievor asserts that the settlement terms and discussions are privileged. The Association agrees but acknowledges the well-accepted principle that the privilege does not prevent hearing evidence or submissions regarding whether a settlement was reached. Third, the grievor disagrees that there was a settlement and cites coercion. The Association acknowledges that it is unaware of any coercion. Finally, on its own behalf the Association asserts that although it agreed to the draft Minutes of Settlement, it appears the grievor did not. Specifically, it cites that the grievor did not agree to withdraw all claims against the City and Sun Life.

21. As well, the Association takes the position that the grievance has now been withdrawn. The City contends that the Association may not do so after a hearing date has been held. I addressed these arguments briefly in my summary and do not need to provide any further comment about this part of the dispute as it does not impact on the outcome of this decision whether there is a settlement of all three of Ms. Somji's pieces of litigation.

ANALYSIS

22. The City has argued, and I agree (and the Association does not dispute), that the test for whether a settlement has been reached is for the arbitrator to determine, even when there is no written agreement, whether the facts indicate that a matter was resolved. (See *Sudbury District Roman Catholic School Board and O.E.C.T.A., Re*, 1997 CanLii 25036 (ONLA)). It notes that the Association has never taken the position that there was no settlement and, in fact, acknowledges that it had agreed

to the terms. As well, the Association wrote on August 7, 2025 asking for a copy of the signed Minutes of Settlement. It did not assert then or ever that there was no agreement, it only asserts that the grievor takes that position.

23. Strictly speaking, in the arbitration of grievances, that would end the matter. The City submits that there is a settlement, the Association does not dispute this. The parties who can make a settlement of the grievance are the parties to the collective agreement, the City and the Association. They can do so with or without the agreement of the grievor.

24. Even so, where as here, the settlement goes beyond the labour relations of the City and the Association and extends to a human rights complaint brought individually and a lawsuit separately brought, I think that I must consider whether Ms. Somji agreed to resolve those disputes too when she accepted the global payment of to her and a lawyer she had individually hired.

25. I find that, for the reasons below, Ms. Somji did, as part of the mediation process and communications on her behalf through her counsel and that counsel's student-at-law, agree to the settlement of all three pieces of litigation.

26. First, the precondition of the mediation was that no settlement was achievable unless all three pieces of litigation were resolved. This was agreed to by Ms. Sheikh, counsel to Ms. Somji.

27. Second, I communicated this several times to Ms. Somji and her counsel during the mediation.

28. Third, the fundamental and substantive terms of a resolution were all negotiated during the mediation. Had nothing else occurred proving a resolution and the next day, Ms. Sheikh had advised that her client had “changed her mind”, there still would have been the essential terms of a resolution upon which the City could have relied. But it does not end there, there were further steps taken that prove there was a deal.
29. On the evening of the mediation, the City was informed that its Minutes of Settlement had been reviewed and two changes were sought and both of those changes were eventually resolved by the parties, both with one side acquiescing to the position of the other. While I have found that a settlement occurred during the Zoom mediation. Had it not, it does occur when there are only two minor details left in dispute, the timing of the payment and the requested RRSP allocation. The fact that these two minor details are eventually resolved is another point at which one could find a settlement.
30. Further, on August 5, 2025, Mr. Jaffer’s email accepts the Minutes of Settlement and then states that Ms. Somji requests one additional term. Whether that term ever could have been agreed to is irrelevant to whether a deal was achieved without it. That term was not essential to the deal. That term had never been raised before August 5, 2025. That term was not one that any of the contracting parties could agree to in any meaningful way because no party had the authority to bind “outsiders” to the deal.
31. Finally, I echo and adopt the words of Adjudicator Love in *Van de Mosselaer v. Treasury Board (Department of Transport)*, 2006 PSLRB 59 (CanLii) at paragraph 57

that there is a strong policy consideration to not have grievors resile from settlement agreements:

As a policy matter, the grievor's conduct in resiling from a settlement agreement reached at mediation has a potential chilling effect on the use of mediation to resolve workplace grievances. This ought to be discouraged, as mediation is a timely, cost efficient and effective method of resolving workplace disputes and allows parties to preserve a mature bargaining relationship.

32. I note, in conclusion, that I have not specifically addressed the arguments raised by the Association on behalf of the grievor. My reason is that the Association does not adopt them as their own. In determining whether the parties, the City and the Association have resolved the grievance (and noting that they may do so without the agreement of the grievor), I need only address arguments made by one of the workplace parties. In this case, the only argument made by the Association is that the grievor did not agree to the settlement. The evidence before me is conclusively clear that she did. That does not change even when, as here, the agreement extends beyond the boundaries of the grievance and resolves other matters that the grievor has with her former employer, the City.

Dated at Toronto, this 22nd day of October, 2025.


Stephen Raymond