IN THE MATTER OF AN ARBITRATION

BETWEEN:

UNIFOR, LOCAL 1996

("the Union ")

and

PEPSICO FOODS CANADA

("the Employer")

AND IN RESPECT OF AN RRSP GRIEVANCE

Stephen Raymond	Arbitrator

Appearances for the Union:

Lisabeth Pimentel	National Representative and Director – Hospitality Sector
Peter Hogarth	Plant Chair
Steve Doherty	President

Appearances for the Employer:

Lorenzo Lisi	Counsel
Zachary Sippel	Counsel
Brienne Maloney	Senior HR Manager
Kassandra Parker	HR Manager
Melissa Porter	Payroll and Benefits
Rachel Keast	HR Manager

A mediation was held on March 11, 2024, March 24, 2025, and November 24, 2025 and written submissions were completed on April 19, 2026.

DECISION

1. The Union and the Employer were parties to a collective agreement with a term from June 14, 2020 to June 13, 2024. I was appointed under that collective agreement to arbitrate a grievance dated February 20, 2023 in respect of RSP payments owed to certain employees in the bargaining unit. Pursuant to that collective agreement, Letter of Understanding # 26 ("LOU #26) provided that certain employees were to receive $500 each into an RSP on October 1, 2020 and then subsequently on February 1 of each of the next three years. The RSP payment was first negotiated into the previous collective agreement which commenced in 2017. Pursuant to that earlier collective agreement, the first payment to any member was to have occurred on October 1, 2017. The vast majority of employees who were to receive the payments did so. Some employees did not "sign up" for the RSP and the Employer had nowhere to pay the money into. The parties had various discussions about this through the years. It was not until February 2023 that a grievance was filed and the Union sought that payments be made back to 2017. The Employer objects and says the collective agreement limits the recovery. Therefore, there is an issue as to the extent of the retroactive effect of the grievance.

2. I asked the parties to make written submissions on the following question:

> Can the Union claim compensation pursuant to the 2020-2024 collective agreement for breach of Letter of Understanding # 26 on behalf of its members back to October 1, 2017 and/or June 14, 2020 (the commencement date of the 2020-2024 collective agreement)?

3. I have now received and considered the written submissions. The Employer filed its submissions first. The Union responded and the Employer filed reply submissions. I gave the Union the option of filing sur-reply submissions and it did so.

4. For the reasons that follow, the Union may not claim compensation for a breach back to October 1, 2017 or June 14, 2020. The collective agreement has an unusual and specific provision ("Article 24") that limits recovery of "pay" to two months prior to the grievance. Given the grievance was dated February 20, 2023, the only payments that the Union may seek on behalf of its members were those that were due on February 1, 2023, and subsequently.

5. This is not a finding that there has been a breach of the collective agreement and that

payments are owing. Rather, it is a decision as to the extent to which the Union can recover payments for the years prior to the date of the grievance.

6. LOU # 26 provides as follows:

> The Company and The Union agree to the following:
>
> Any New Hire hired after June 15, 2014, shall receive the following lump sums to be contributed to the Company Group RRSP Program to be used at their discretion upon retirement or end of employment:
>
> Lump sums as follows:
>
> October 1, 2020: $ 500
>
> February 1, 2021: $ 500
>
> February 1, 2022: $ 500
>
> February 1, 2023: $ 500

7. Letter of Understanding # 26 was a renewal of a Letter of Understanding that was in the previous Collective Agreement which provided, using the same language, lump sums as follows:

> October 1, 2017: $500
>
> February 1, 2018: $ 500
>
> February 1, 2019: $ 500

8. Those were the first time that specific RRSP payments to New Hires were negotiated.

9. Article 24 of the collective agreement provides as follows:

> The Arbitrator shall not be authorized to make any decision inconsistent with the provisions of this agreement nor to alter, modify or amend any part of this agreement.
>
> When a grievance which affects an employee's pay is settled, the settlement may be made retroactive for a period as agreed to by the conferring parties or by a majority decision of a Arbitrator, but in no case will the settlement be made retroactive for a period greater than two months prior to the last date on which the grievance was presented in writing to the Company.

10. The first issue that I need to address is whether Article 24 limits the remedy in this grievance to two months prior to the date of the grievance. I find that it does. The Union acknowledged in its written submissions that this grievance was one in respect of pay. Therefore, Article 24 applies to the resolution of this grievance however that is achieved, whether by settlement or a decision.

11. The language of Article 24 is somewhat convoluted. That said, there are only two outcomes to a grievance about pay. Either the parties settle it or the arbitrator decides it and issues an award. In either event, Article 24 makes it clear that the amounts owing are limited to the two months prior to the grievance. This Article governs a dispute about pay and the operation of Article 24 answers the question I posed to the parties.

12. Absent Article 24, the Union may well have had a good case for recovery back to the commencement of the collective agreement. There is even jurisprudence (see *Torcad Ltd. v. U.S.W., Local 13571*, 2009 CarswellOnt 8671, [2009] O.L.A.A. No. 423, 187 L.A.C. (4^{th}) 41, 99 C.L.A.S. 72 (Brownlee) that would support the recovery back to the date of the first payment. But, Article 24 does exist and I must give it effect and it is because of Article 24 and only Article 24 that I answer the question posed to the parties in the negative; that is, the Union may not make a claim for any period other than two months prior to the date of the grievance.

13. I make this determination notwithstanding a number of other good arguments made by the Union. First, the payments are in the imperative, employees **shall receive**(emphasis mine). The Employer's argument that members have to sign up to receive is neither in the LOU # 26 nor should that undermine the imperative nature of the payment obligation. Also, the Union cites that the Employer is specifically obligated by the collective agreement to be responsible for the administration of the collective agreement. I agree with the Union that if people were not signed up, it was the obligation of the Employer to make sure that they did sign up and to notify the Union of those who had not signed up and the reasons why. I also agree with the Union that the purpose clause which directs an "equitable disposition" of grievances could have led me to accept that the grievance could have retroactive effect to at least the commencement of the collective agreement. I agree with the Union that even if it was okay for the Employer to hold on the payments for employees who did not sign up, it is not equitable for the Employer now to keep those payments. As I have said, a number of good arguments but I must not read Article 24 out of the collective agreement.

14. Article 24 exists. It is trite law of contract interpretation that the specific overrides the general and Article 24 is the specific provision relating to a grievance about pay. The grievance is about pay. Article 24 expressly limits recovery to the no earlier than two

months prior to the date of the grievance.

15. I remain seized in respect of the interpretation and implementation of this award. This matter is scheduled to continue on June 10, 2026.

Dated at Toronto, this 30th day of April, 2026.

Stephen Raymond