

**IN THE MATTER OF AN EXPEDITED MEDIATION/ARBITRATION
BETWEEN**

HYDRO ONE INC.

(“Hydro One”)

and

POWER WORKERS’ UNION

(the “PWU”)

MONTHLY MEDIATION/ARBITRATION

**GRIEVANCE NUMBERS: HO-WS-2106, HO-WS-2142, HO-T-4836, HO-T-4857,
HO-T-4862, HO-T-4900, HO-T-4914, HO-T-4768, HO-WS-2118, HO-WS-2045,
HO-WS-2141, HO-T-4677, HO-T-4845, HO-T-4859, HO-WS-2092-HO-WS-2093,
HO-T-4918, HO-T-4984, HO-WS-2167, HO-T-4788, HO-WS-2079**

CHIEF ARBITRATOR: John Stout

APPEARANCES:

For Hydro One:

Daniel McDonald, Norton Rose Fulbright Canada LLP
Joseph Cohen-Lyons, Norton Rose Fulbright Canada LLP

For the PWU:

Donald K. Eady, Paliare Roland LLP
Kate Shao, Paliare Roland LLP
William Webb, Paliare Roland LLP

HEARINGS HELD BY VIDEOCONFERENCE ON MAY 6 AND 13, 2026

AWARD

1. The parties appeared before me on May 6 and 13, 2026 for the monthly grievance mediation/arbitration hearings. Prior to the hearings the parties filed extensive written briefs. Several matters were heard, and this award addresses the following grievances:

HO-WS-2106 and HO-WS-2142

2. These grievances were settled by the parties prior to the hearing.

HO-WS-2045

3. The parties agreed to adjourn this grievance before the hearing.

HO-T-4836, HO-T-4841, HO-T-4857, HO-T-4862, HO-T-4900, and HO-T-4914

4. These grievances all concern an allegation that Hydro One violated the Collective Agreement when they failed to pay these Grievors, who are mentors, Temporary Instruction daily allowances ("Instructor Allowance") for delivering Mentorship Day programming.

5. Hydro One denies violating the Collective Agreement. According to Hydro One, mentors are not entitled to the Instructor Allowance because the provision of guidance to apprentices falls squarely within the scope of the mentor's normal duties.

6. During mediation, I noted that the first issue involves determining whether the Grievors were withdrawn from their normal duties to prepare for and/or deliver classroom instruction or group demonstration. The next issue would be to determine if any of the exceptions to the Instructor Allowance apply, particularly the exception for "normal journeyperson to apprentice relationships."

7. The parties were unable to resolve the dispute. However, it was agreed that the PWU would need to provide additional particulars of the circumstances where they claim an Instructors Allowance was required to be paid. Hydro One would then need an opportunity to review the particulars with a view to agreeing to non-contentious facts. Once the parties have gone through that exercise, they may bring the matter back before me for mediation or a direction on how the arbitration should proceed.

HO-T-4768

8. This grievance, filed on September 24, 2024, concerns a claim that Hydro One violated the Collective Agreement by failing to pay the Grievor sick leave benefits. The matter was originally brought before me for mediation on April 1, and 14, 2025. The matter was not resolved so it was to be scheduled for arbitration.

9. There is no dispute that the Grievor was absent from work from December 21, 2023 until May 31, 2025. During this period of absence, the Grievor received sick leave benefits for certain periods of time, when his claim was medically supported and for certain periods of time when Hydro One asserts his claim was not medically supported. There is also a period where the Grievor was not paid any sick leave benefits and Hydro One asserts the claim was not medically supported.

10. The PWU argues that the entire period of absence was medically supported and the Grievor is entitled to payment of sick leave benefits for the entire period of time. The PWU seeks payment of the sick leave benefits to the Grievor for the periods when Hydro One did not pay him benefits.

11. Hydro One denies owing the Grievor any monies at all. Hydro One raises a preliminary objection to the arbitrability of the grievance. Hydro One asserts I have no jurisdiction to resolve the grievance because the Grievor signed a voluntary separation package ("VSP") and a release ending his employment with Hydro One

effective May 31, 2025. According to Hydro One, the Grievor is no longer a Hydro One employee, and he has released Hydro One of all claims. Therefore, according to Hydro One, there is no dispute left to resolve.

12. The PWU argues that the preliminary objection must be dismissed because they are the exclusive bargaining agent and they have carriage over the grievance. Any agreement or release signed by the Grievor without the PWU's consent is invalid as it relates to the substance of the grievance and therefore cannot be a bar to hearing and resolving the grievance. In addition, the PWU argues that monies deducted from the Grievor's VSP, on account of an alleged overpayment, were inappropriately deducted since they were related to this grievance.

13. After carefully considering the parties' submissions, I find that the preliminary objection must be dismissed.

14. After mediation, Hydro One offered the Grievor a VSP, which was consistent with his rights under Article 11.1 and 11.8 of the Collective Agreement. The Grievor signed the VSP and the attached release on May 20, 2025, resigning from his employment with Hydro One effective May 31, 2025.

15. Article 1 of the Collective Agreement is the recognition clause, which clearly provides that the PWU is the exclusive bargaining agent. Union recognition clauses are fundamental to the labour relations regimes in Canada, which are based on the Wagner model.

16. It is well accepted that individual employees are free to resign their employment and do not require their union's consent. That being said, in a unionized environment an individual employee cannot make a private deal, arrangement or agreement with an employer that alters or subverts the union's exclusive right to represent employees, see *British Columbia v. BCGEU*, 1987 CarswellBC 1982.

17. The VSP was in a form that was shared with the PWU. However, nothing in the VSP form refers to the resolution of any individual grievance, particularly a grievance that had already been referred to arbitration.

18. If Hydro One seeks to resolve a grievance as part of a VSP, then they require the PWU's consent to resolve the grievance. The resolution of any grievance is a matter over which the PWU has exclusive jurisdiction and unless delegated to the employee any agreement between an employee and an employer resolving a grievance is null and void.

19. Accordingly, the preliminary objection is dismissed. The matter may be scheduled for arbitration on the merits.

HO-WS-2118

20. This grievance concerns an allegation that Hydro One violated the Collective Agreement and the Ontario *Human Rights Code* (the "Code") by denying the Grievor sick leave. Hydro One also claims an overpayment for sick leave benefits advanced to the Grievor that they assert were not properly supported by medical evidence.

21. An Independent Medical Examination ("IME") has taken place, and a report was issued (mistakenly dated 2025 but should be 2026). Telus Health is considering this additional medical documentation and adjudicating the Grievor's appeal. The matter is therefore adjourned to June 16, 2026. If the appeal has not been adjudicated by June 16, 2026, then I may order Telus Health to expedite the adjudication or I may take matters into my own hands.

HO-WS-2141

22. This grievance concerns an allegation that Hydro One violated the Collective Agreement and the Code by allowing employees to engage in sexual harassment in the workplace, which created a poisoned work environment. The PWU seeks damages for the Grievor.

23. I have issued a separate award to resolve this grievance.

HO-T-4677

24. This grievance, filed April 12, 2024, concerns the retrogression of the Grievor without wage maintenance.

25. There is no dispute that the Grievor sustained a work-related injury on December 12, 2011 (the “2011 accident”), for which he has received Workers Safety and Insurance Board (“WSIB”) benefits. At the time of this incident the Grievor was employed in the hiring hall.

26. The Grievor became a regular employee working in the Regional Maintainer Civil – Union Trade Supervisor 3 (“UTS-3”) position in February 2015.

27. There is a dispute relating to the PWU’s allegation that the Grievor suffered a “reoccurrence” after an October 2018 flight. Hydro One has no record of any incident occurring and points to the fact that the Grievor completed over 600 flights between 2011 and 2018.

28. On November 5, 2021, the Grievor was granted Medically Restricted at Work (“MRAW”) status, recognizing a permanent restriction from flying to communities where Hydro One provides services.

29. On December 21, 2023, the Workers Safety and Insurance Appeals Tribunal (“WSIAT”) granted the Grievor entitlement for a psychotraumatic disability resulting from the 2011 accident.

30. On February 26, 2025, the WSIB granted the Grievor with entitlement to full loss of earnings (“LOE”) and partial loss of earnings (“PLOE”).

31. On March 18, 2025, the WSIB granted the Grievor with a non-economic loss/permanent impairment (“NEL”) award.

32. On April 10, 2025, the WSIB released its calculation for PLOE benefits between November 25, 2021 and April 9, 2025.

33. The LTD Review Committee met on June 12, 2025 to discuss the Grievor’s case. The parties reconciled the Grievor’s issues relating to reconciling his WSIB award and LOE entitlement.

34. The issue in dispute is the entitlement under Part A, Item 4.3(3). The PWU asserts that the Grievor suffered a serious injury and as such is entitled to the wage protection special condition. Hydro One takes the position that the Grievor has no entitlement because the injury took place when the Grievor was working out of the hiring hall and prior to the Grievor becoming a regular employee. Hydro One also argues that the grievance is untimely and as such should not be entertained. In the alternative, the injury the Grievor sustained was not a “serious injury” as it is understood under Part A, Item 4.3(3) of the Collective Agreement.

35. Starting with Hydro One’s argument about the timing of the injury, I note that Part A, Item 4 applies to retrogression of a regular employee. The Grievor was a regular employee when Hydro One applied retrogression. Part A, Item 4.3 provides “Special Provisions” and those provisions are not limited by the date of injury nor the status of the employee when they suffered a “serious injury” that

resulted from an on-the-job accident. If the parties intended to have such a limitation, then they would have stated as much in much clearer language.

36. In terms of timeliness, the objection is rejected as no substantial prejudice has occurred, which cannot be addressed in a remedy. Article 3.4 provides me with the power to relieve against time limits and Article 3.5 provides that I am to determine the real issues in dispute. Grievances are resolved on their merits unless a substantial prejudice has occurred that cannot be addressed by remedy. The Company has demonstrated no substantial prejudice.

37. Turning to the interpretation of serious injury, a few basic observations can be made:

- It cannot be that any employee who has suffered a workplace injury who can no longer perform their regular duties cannot be retrogressed. If such were the case, then the parties would have stated as much in explicit language.
- The definition of serious injury must include serious injuries that result in a mental disability.
- The definition of serious injury cannot equate with the definition of critical injury under the *Occupational Health and Safety Act* because these sophisticated parties would have clearly adopted such a definition if they wished to do so.

38. I am left with what is the normal and ordinary meaning of “serious injury”. The word serious is an adjective which denotes something severe, grave or causing great concern. A serious injury would include a life-threatening or an injury requiring serious medical intervention or hospitalization that results in serious permanent physical or mental impairment. An injury where death is possible would be serious as would a permanent life altering injury, such as paralysis. An injury that is treatable with first aid would not be a serious injury. An injury that did not in any meaningful way interfere with one’s functional abilities would not be serious.

39. While I appreciate the PWU's position and I have great empathy for the Grievor and how he suffers, I find that his injury is not serious as contemplated by Part A, Item 4.3(3) for the following reasons:

- The initial injury was a flight in 2011 resulting in a short hospital stay to treat smoke inhalation. The Grievor flew many flights between 2011 and the secondary incident in 2018.
- The 2018 incident involved no hospitalization. The Grievor continued flying for a period after that flight and did not seek medical attention. It was not until later that the Grievor required treatment for depression and PTSD.
- The Grievor's impairment is related only to his permanent restriction for flying on small planes and no other impairment. The Grievor could perform all the duties of his former job except travelling on small planes, which is an essential duty in the far north where he works. The Grievor could perform his pre-injury job if he were not required to fly to smaller communities.
- The March 18, 2025 NEL decision of the WSIB awards 10%, which is "mild impairment".
- The WSIB Mental Health Specialty Program Report dated February 5, 2025 indicates that the Grievor has mild impairment in some areas and no impairment in others, while his symptoms were improving. His functional abilities were also very good.

40. In my view, the injury was not a "serious injury" as required in Part A, Item 4.3.(3) to be entitled to wage maintenance. The Grievor is able to function well, and his only restriction is flying on small aircraft. I do not find his injury to be serious. Therefore, the grievance must be dismissed.

HO-T-4845

41. In this grievance the PWU alleges that Hydro One violated the Collective Agreement by failing to award the Grievor a UTS-3 position in Peterborough, Ontario.

42. The matter was resolved in mediation and the parties entered into Minutes of Settlement (“MOS”).

HO-T-4859

43. This grievance concerns an allegation that Hydro One violated the Collective Agreement by failing to post and fill a UTS-3 position at Sarnia Scott Station Services.

44. The matter was resolved in mediation and the parties entered into Minutes of Settlement (“MOS”).

HO-WS-2092 and HO-WS-2093

45. In these grievances, the Grievors who were assigned to a temporary work headquarters (“TWHQ”) seek payment of meal allowances.

46. The parties were unable to agree upon a mediated resolution. The matter is to be scheduled for arbitration.

HO-T-4918 and HO-T-4984

47. These grievances were filed by the PWU on behalf of a Grievor who seeks access to her sick leave credits and reasonable accommodation. Hydro One advises that they view this as a matter between the Grievor and the WSIB.

48. The parties were unable to agree upon a mediated resolution. The matter is to be scheduled for arbitration.

HO-WS-2167

49. In this grievance the PWU seeks a work from home arrangement for a Grievor who suffers from a disability.

50. The parties were unable to agree upon a mediated resolution. The matter is to be scheduled for arbitration.

HO-T-4788

51. This grievance concerns a request to accommodate the Grievor, who suffered a workplace injury, with a workplace closer to his home.

52. The history of events leading up to the filing of the grievance is set out in the Briefs, but can be briefly stated as follows:

- Grievor sustained two workplace injuries (2018 and 2021) involving his left shoulder while working as an Electrical Forestry Journeyperson (“EFJP”) in the Hiring Hall.
- March 31, 2022, the Grievor reached maximum medical recovery and had permanent restrictions.
- PWU filed a grievance HO-APPA-771 alleging failure to accommodate. That grievance was resolved on March 14, 2023. The settlement provided an opportunity to become an Area Forestry Technician (“AFT”).
- In May 2023, the Grievor began receiving opioid medication for pain. On July 5, 2023 the Company took the position that the Grievor could not perform the AFT position due to the pain medication he was prescribed.
- June 2024 the Grievor was offered a Regular AFT position in Alymer, but the offer was withdrawn due to the pain medications. The PWU filed grievance HO-T-4788 on June 13, 2024.

53. The grievance was resolved during mediation on May 6, 2025 and the parties set out their agreement in an MOS. The MOS provided that the Grievor would be placed in a Zone Planning Technician (“Planning Technician”) role in Barrie effective June 9, 2025 for a six-month probationary period. The Planning Technician position is subject to a hybrid work schedule, requiring two days in

office attendance per week. The Grievor was provided Temporary Work Headquarters (“TWHQ”) compensation for the two days during the probation period. The MOS provided that the Grievor would be granted a permanent Planning Technician role if he successfully completed the probationary period. The Grievor failed the Planning Technician examination by a small margin (64% and pass 71%). Hydro One waived the testing requirement and awarded him the permanent position.

54. The only issue remaining in dispute is the work location. The Grievor lives in St. Thomas and the two day a week commute to Barrie is a hardship according to the PWU. The PWU argues that the work can be performed at a Hydro One office closer to St. Thomas.

55. The test for *prima facie* discrimination is set out in *Moore v. British Columbia (Education)* [2012] 3 SCR 360. In this case, the Grievor clearly has a characteristic protected from discrimination; a work related injury for which he received WSIB benefits. The Grievor has experienced an adverse impact as he is being prevented from performing the AFT role in Aylmer. The Grievor’s disability is a factor in the adverse impact as the sole reason why he is not being permitted to perform that job is his pain medication. As a result, *prima facie* discrimination has been established and I must now turn to the test for *bona fide* occupational requirement.

56. In *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999 CanLII 652 \(SCC\)](#), [1999] 3 S.C.R. 3 (“*Meiorin*”), the Supreme Court of Canada set out the test for a *bona fide* occupational requirement, which includes the duty to accommodate. In setting the test for a *bona fide* occupational requirement, *Meiorin* provides that: [a]n employer may justify the impugned standard by establishing on the balance of probabilities:

- (1) that the employer adopted the standard for a purpose rationally connected to the performance of the job;

(2) that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose; and

(3) that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer. [para. 54]

57. In *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, [2008 SCC 43](#), [2008] 2 S.C.R. 561, at paras. [12 and 16](#), the Supreme Court of Canada elaborated on the undue hardship criteria:

What is really required is not proof that it is impossible to integrate an employee who does not meet a standard, but proof of undue hardship, which can take as many forms as there are circumstances. . . .

. . .

The test is not whether it was impossible for the employer to accommodate the employee's characteristics. The employer does not have a duty to change working conditions in a fundamental way, but does have a duty, if it can do so without undue hardship, to arrange the employee's workplace or duties to enable the employee to do his or her work.

58. In *Central Okanagan School District No. 23 v. Renaud* [1992] 2 SCR 970, the Supreme Court of Canada further commented on the accommodation process and the duty of a complainant:

The search for accommodation is a multi-party inquiry. Along with the employer and the union, there is also a duty on the complainant to assist in securing an appropriate accommodation. The inclusion of the complainant in the search for accommodation was recognized by this Court in *O'Malley*. At page 555, McIntyre J. stated:

Where such reasonable steps, however, do not fully reach the desired end, the complainant, in the absence of some accommodating steps on his own part such as an acceptance in this

case of part-time work, must either sacrifice his religious principles or his employment.

To facilitate the search for an accommodation, the complainant must do his or her part as well. Concomitant with a search for reasonable accommodation is a duty to facilitate the search for such an accommodation. Thus in determining whether the duty of accommodation has been fulfilled the conduct of the complainant must be considered.

This does not mean that, in addition to bringing to the attention of the employer the facts relating to discrimination, the complainant has a duty to originate a solution. While the complainant may be in a position to make suggestions, the employer is in the best position to determine how the complainant can be accommodated without undue interference in the operation of the employer's business. When an employer has initiated a proposal that is reasonable and would, if implemented, fulfil the duty to accommodate, the complainant has a duty to facilitate the implementation of the proposal. If failure to take reasonable steps on the part of the complainant causes the proposal to founder, the complaint will be dismissed. The other aspect of this duty is the obligation to accept reasonable accommodation. This is the aspect referred to by McIntyre J. in *O'Malley*. The complainant cannot expect a perfect solution. If a proposal that would be reasonable in all the circumstances is turned down, the employer's duty is discharged.

59. I want to be clear, Hydro One has acted in good faith and made significant efforts to accommodate the Grievor. Their efforts are to be commended. The Grievor has also cooperated in the accommodation process, and his only issue is solely related to the nature of the commute, which he and the PWU argue is unreasonable given the circumstances.

60. Hydro One has the right to determine where its employees are to perform their work. Some might say that is a fundamental right. In addition, an employer is not generally required to accommodate a commute. However, in some cases, like this one where the commute is as a result of the offered accommodation, the question becomes more nuanced, see for example *TDSB and OSSTF*, 2020 CanLII 673 (ON LA). In my view, a reasonable accommodation is one that provides suitable work for the employee that is within a reasonable commute.

Accommodation does not have to be perfect, nor does it need to include employee preferences, but it must always be reasonable.

61. In my view, a commute of approximately four (4) hours each way through a well-known snow belt is unreasonable. While I appreciate Hydro One's concerns about training and supervision there are more reasonable ways to address those concerns. It is noteworthy that the position in question is hybrid and the Planning group within the Forestry Work Management is not consolidated in one location. The Grievor is also willing to commute to a Hydro One location closer to his home. In this regard, Hydro One may be able to provide a workspace for the Grievor at their Woodstock office. In the alternative, Hydro One can explore a Homeworker Agreement. A Homeworker Agreement is not ideal as it results in a pay reduction, but that is surely more reasonable than requiring the Grievor to commute or move to Barrie. In the final alternative, Hydro One could provide the Grievor with TWHQ compensation for days when he is truly required to attend at the Barrie office.

62. Having regards to the above, I am allowing the grievance, and I remit the matter back to the parties to discuss and agree upon a more reasonable accommodation. I remain seized.

HO-WS-2079

63. This matter concerns the repayment of an overpayment of long-term disability (LTD) benefits resulting from the settlement of the grievance.

64. The matter is adjourned to the June monthly review date. There is an issue as to whether the Grievor can return to work. Hydro One is to provide the Grievor with a functional abilities form ("FAF"), which the Grievor will take to her physician. If the physician indicates that the Grievor can return to work, but has restrictions/limitations, then a return-to-work meeting shall be scheduled to discuss accommodation. In the meantime, Hydro One is to provide the PWU with a list of questions about the Grievor's financial obligations.

65. I remain seized.

Dated at Toronto, Ontario this 19th day of May 2026

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke extending to the right.

John Stout - Chief Arbitrator