

In an arbitration pursuant to the collective agreement

BETWEEN

**Canadian Union of Public Employees, Local 2
("the Union")**

And

**Toronto Transit Commission
("the Employer")**

Re: Policy Grievance EFAP

Before: Matthew R. Wilson

For the Union:

Marisa Pollock, Counsel
Amy Chen, Counsel
Sumit Guleria, Local President

For the Employer:

Steve Lavender, Counsel
Guido Pincente, Manager, Employee Relations

A hearing was held by video on May 5, 2025.

AWARD

1. I was appointed by the parties to hear the Union's grievance in respect to the Employee and Family Assistance Program.
2. Two procedural awards have been issued on consent of the parties that deal with obligations related to production and particulars. This award deals with the Employer's motion to dismiss the grievance for abuse of process, in particular for the Union's failure to comply with the timelines set out in the award dated November 4, 2024.
3. The parties' positions can be briefly summarized.
4. The Employer argues that the grievance should be dismissed as the Union has clearly flouted the timelines for production and particulars as set out in the award. It is frustrated that the Union insisted on having a second procedural order in place that set out the agreed-upon timelines, which were then ignored by the Union. It relies on a series of cases to argue that the Union's conduct amounted to an abuse of process.
5. The Union disputes the Employer's characterization of the circumstances. It acknowledges that it was late with its response, but pointed out that it has always been responsive to the correspondence and had advised the Employer that it intends to proceed with the grievance. As it was only late with its response by two weeks, there has been no prejudice to the Employer's case.
6. For the following reasons, the Employer's motion is dismissed.
7. While it is true that the Union was late in filing its response, the delay was short and not within the range usually seen in the cases where a grievance is dismissed for abuse of process. It is a delay of approximately two weeks and counsel for the Union has been responsive to the Employer's correspondence.
8. There has been no prejudice suffered by the Employer. There are also no issues of procedural fairness as the obligations set out in my award can still be satisfied with some modifications. I am not persuaded that there has been an abuse of process with such a short delay.
9. There remains an obligation on the Employer to respond to the Union's response. It shall have 30 days from the date of this award to submit its response. The Union's subsequent deadline shall be modified accordingly. Any issues may be brought back before me in advance of the next scheduled hearing date.
10. This matter remains scheduled for July 28, 2025 by video hearing.

Dated this 8th day of May, 2025.

A handwritten signature in black ink, appearing to read 'Matthew R. Wilson', written over a horizontal line.

Matthew R. Wilson