

## **Damage Awards in Labour Arbitration Cases**

Labour arbitrators are increasingly willing to award monetary damages to grievors for employer breaches of the collective agreement. In the landmark case of **Toronto Transit Commission v. A.T.U.**, [2004] O.L.A.A. No. 565, Arbitrator Owen Shime determined that a grievor subjected to protracted harassment by his supervisor was owed \$25,000 in general damages, a groundbreaking decision at that time.

Over the years, arbitrators have begun to embrace their power to award significant damages to unions and grievors, particularly in cases of sexual or gender-based harassment. In **Hamilton (City) v Amalgamated Transit Union, Local 107**, [2013 CanLII 62266](#), Arbitrator Kelly Waddingham awarded \$25,000 in human rights damages to a grievor who was sexually harassed by her supervisor following which, she was the victim of a deficient investigation into her allegations.

Similarly, in **Calgary (City) and C.U.P.E., Local 38**, [2013 CanLII 88297](#), a grievor who was repeatedly sexually assaulted by a supervisor was awarded \$125,000 in human rights damages by a Board of Arbitration which observed that the city's investigation into her allegations was flawed. The grievor was also awarded over \$600,000 in damages for past and future loss of income and \$28,000 in special damages for therapy costs. Lastly, in **Corporation of the City of Calgary v Canadian Union of Public Employees, Local 37**, [2018 CanLII 53482](#), the grievor was awarded \$75,000 in general damages and three (3) years of past income loss by the Board of Arbitration after she was subjected to workplace harassment, discrimination and gender-based ostracism led by her supervisor.

Alongside the rise in the amount of human rights damages being awarded to grievors, wrongful dismissal grievances can also result in significant termination awards against employers. In **Canadian Broadcasting Corporation v. Association of Professionals and Supervisors**, [2020 ONSC 6531](#), ([CanLII](#)), the Divisional Court upheld an arbitral award of \$392,276 for loss of future income and moral damages to a grievor who had been wrongfully dismissed contrary to the collective agreement where reinstatement was not a viable option.

There is no evidence to suggest that this trend of awarding sometimes substantial damages to grievors is abating. Below is a sampling of some more recent examples of arbitral damage awards.

**Unity Health Toronto v Canadian Union of Public Employees, Local 5441**, [2021 CanLII 60006](#) – The Hospital was ordered to pay \$375 to each affected employee for violating the consultation and notice provisions in the collective agreement when it

reorganized its operating room procedures.

***Toronto Catholic District School Board v Ontario English Catholic Teachers' Association***, [2021 CanLII 44852](#) – The Board failed to comply with multiple arbitral orders to produce certain health and safety documents to the Union. The Board was ordered to pay \$25,000 in reputational damages (for causing the Union to look ineffective to its members) and \$30,000 in punitive damages (for failing to act in good faith in the administration of the collective agreement).

***City of Vancouver, Fire & Rescue Services v International Association of Fire Fighters, Local 18***, [2021 CanLII 41412 \(BC LA\)](#) – The City was ordered to pay \$5,000 in punitive damages to the Union as a deterrent for repeated violations of the *Employment Standards Act* when it deducted overpayments from employee paychecks without express consent.

***Canadian Union of Public Employees, Local 109 v Corporation of the City of Kingston***, [2020 CanLII 13172](#) – The City was ordered to pay \$8,000 in general damages for terminating an employee, without cause, based on her disability related attendance record.

***Gateway Casinos & Entertainment Limited v United Food and Commercial Workers Union, Local No. 401***, [2020 CanLII 91851 \(AB GAA\)](#) – The Employer was ordered to pay \$10,000 to the Union for breaching the consultation and seniority provisions of the collective agreement when it laid off full-time employees before adjusting or eliminating part-time hours.

***Winnipeg (City) and WPA, Re***, (2020) 144 C.L.A.S. 22 – The City was ordered to pay \$40,000 to the Union and \$400 to each member of the bargaining unit as damages when it unilaterally amended its pension plan in several ways (including excluding overtime from pensionable earnings), in violation of the collective agreement.

***Tolko Industries Ltd. and USW, Local 1-2017 (Brandle), Re***, (2020), 146 C.L.A.S. 98, 320 – The Employer was ordered to pay \$1750 in damages for breaching the employee's privacy rights when it required him to submit to a drug test without first carrying out a proper investigation into the disciplinary incident.

***CUPE, Local 4400, Unit C v Toronto District School Board***, [2019 CanLII 128802](#) – The Board was ordered to pay \$9,000 in damages to the Union for violating the collective agreement by using volunteers to perform bargaining unit work.

***Queen's University v Queen's University Faculty Association***, [2019 CanLII 58233](#) – The University was ordered to pay \$20,000 in general damages and \$5,000 in

punitive damages for relocating a professor's office and thereby undermining her dignity, self-respect, and reputation, causing her mental distress.

***International Union of Operating Engineers, Local 772 v University of Ottawa***, [2019 CanLII 29865](#) – The University was ordered to pay \$5,500 in general damages for violating its procedural duty to accommodate the employee by delaying his return to work.