Between:

Denise Seeley

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian National Railway

Respondent

Ruling

Member: Michel Doucet
Date: October 2, 2013
Citation: 2013 CHRT 22

[1]   Having reviewed the parties' correspondence of September 13th, 20th and 23rd, 2013 and having reviewed the Tribunal's decision in *Seeley v. Canadian National Railway* 2010 CHRT 23, I have come to the following conclusions.

[2]   The parties will file written submission on the following issues:

1.   What is the proper methodology for calculating lost wages owing to Ms Seely?

2.   Is Ms Seely entitled to receive payment in lieu of benefits she did not receive (extended health and benefits; dental benefits; accident insurance; life insurance) and if so, the amount of compensation to which she is entitled?

[3]   I wish to remind the parties that they had ample opportunity during the hearing of this complaint to submit evidence and file documents in regards to lost wages. They choose not to. They felt that once the merit of the case was determined that they would be able to come to an agreement on the matter and they therefore asked the Tribunal to render an order setting out, in general terms, the procedure that should be followed. This explains paragraph 183 of the Tribunal's decision which states:

> [183] The complainant seeks compensation for all wages and benefits lost pursuant to s. 53(2)(*c*) of the *CHRA*. Considering my conclusion as to the date of reinstatement, I order that the Complainant be compensated for all lost of wages and benefits from March 1st, 2007 to today. The parties are ordered to calculate the amount of wages owing using the formula provided for in the Collective Agreement. **In regards to extra payments that a road Conductor could receive, since it would be difficult for the Tribunal to set an amount, it is ordered that the parties establish this amount by looking at the extras that were paid for the period to a Conductor with similar seniority working in the terminal, assuming that that Conductor had no unusual absences. The parties could, for example, take into consideration the extra payments that were paid to the employee who was set up in Jasper in March 2006.** [The emphasis is ours.]

[4]   The parties were therefore asked to collaborate in order to establish the amount due to the complainant. The reference in the above paragraph to the employee set up in Jasper in March of 2006 was given as an example and nothing else. It might be that this employee is the appropriate

comparator, assuming as the decision sets out that he has "no unusual absences." Canadian National Railway (CN) is in the best position to bring forward evidence that this is the case and that is why I indicated during the Case Management Conference Call held on August 28, 2013, that it would be asked to proceed first and set out, with supporting evidence, how it had proceeded to establish the amount owed to the complainant. The complainant would then be asked to respond to CN's argument and indicate, if it chooses to do so, why it feels that the procedure used by CN is inadequate. CN will then have an opportunity to reply. On the basis of these arguments I will render a decision whether or not the methodology proposed by CN for the calculation of loss wages is appropriate.

[5]   I therefore order that CN's arguments be filed by November 15th, 2013. The complainant will then have until January 15th, 2014, to file its response. CN's will then have until January 30th to file its reply.

Signed by

Michel Doucet
Tribunal Member

Ottawa, Ontario
October 2, 2013

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Canadian Human Rights Tribunal

Parties of Record

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Tribunal File: T1355/8508

Style of Cause: Denise Seeley v. Canadian National Railway

Ruling of the Tribunal Dated: October 2, 2013

Appearances:

Meryl Zisman Gary, for the Complainant

Ikram Warsame, for the Canadian Human Rights Commission

William Hlibchuk, for the Respondent