

IN THE MATTER OF AN ARBITRATION

BETWEEN:

The University of Toronto

and

The University of Toronto Faculty Association

(PTR Dispute)

Before: William Kaplan
Sole Arbitrator

Appearances

For U of T: John Brooks
Jonathan Maier
Hicks Morley
Barristers & Solicitors

For UTFA: James McDonald
Mary-Elizabeth Dill
Goldblatt Partners
Barristers & Solicitors

The matters in dispute proceeded to a hearing by Zoom on December 17, 2020.

Introduction

On April 25, 2018, the University of Toronto (“the University”) and the University of Toronto Faculty Association (“the Association”), following months of intermittent mediation, executed a Memorandum of Agreement (“the MOA”) settling the salaries, including merit-based progress through the ranks compensation (“PTR”), for faculty and librarians for the period July 1, 2018, to June 30, 2020. I was the mediator in the process that led to the MOA and, as requested by the parties, I remained seized “as mediator-arbitrator of any issues concerning the implementation, interpretation, administration, application or alleged breach of the terms and conditions” of the MOA. As it happens, a dispute did arise and the parties agreed on a process and protocol for its resolution.

The process provided for the filing of briefs, a reply brief, and books of documents. The case then proceeded by Zoom on December 17, 2020. The protocol memorialized the parties’ shared acknowledgement that the documents tendered during the mediation preceding the MOA were part of a mutually agreed confidential and without prejudice mediation. Nevertheless, it was agreed that they could be referred to in this proceeding but that this was “without prejudice or precedent to the rights of the University or UTFA and/or any position that either party may take in any other proceedings with respect to the admissibility of without prejudice communications, in whole or in part, and the fact of the agreement [to allow reference to them in these proceedings] may not be referred to or relied on by either party for any purpose whatsoever in any other proceeding.”

Issue in Dispute

The issue in dispute can be simply stated: Does the MOA require a PTR payment to be made on July 1, 2020? The Association says that it does, while the University says that it does not. Related to this, the University also says since this payment would be made outside the term of the MOA, it is beyond my jurisdiction as the mediator-arbitrator under the MOA. The University notes that the MOA states: “This agreement is for 2 years commencing July 1, 2018 and ending on June 30, 2020.”

The University’s jurisdictional objection can be summarily dealt with. The conferral of jurisdiction could not have been broader and its purpose was to resolve any and all disputes that arose under the MOA. Accordingly, if the MOA provided for a payment to be determined within its term but paid outside its term – something that is far from unheard of – it would be wholly within jurisdiction to mediate and/or arbitrate any such dispute where general residual powers have been conferred, as they have been here.

Moreover, this case concerns the interpretation of a specific and disputed term of the MOA, the obligations and entitlements it may or may not contain, and their meaning, scope and reach. The parties conferred jurisdiction for precisely this sort of dispute. Accordingly, the University’s jurisdictional objection is dismissed. That then leaves the (restated) question: what exactly did the parties agree to?

Some Background

The University and the Association have, for close to 50 years, been parties to a Memorandum of Agreement setting out certain terms and conditions of employment for faculty and librarians including salary and benefits. For decades, an important and significant component of the total compensation received by faculty and librarians has been PTR. PTR is central to the overall compensation scheme; it is merit based and it is the only source of promotional increases: it is the means by which faculty and librarians advance economically, recognizing each individual's contribution to teaching, research and service in the previous academic year. PTR assessment is retrospective: the award on July 1st of one year is based on activity in the preceding twelve months and is calculated based on salaries in place as of June 30th. The details of the PTR process are fully set out in the parties' briefs.

Given PTR's importance, when the parties meet to negotiate pursuant to Article 6 of the Memorandum of Agreement, they collectively bargain about all aspects of PTR.

In fact, one of the principal issues in bargaining leading ultimately to the MOA was whether the July 1, 2018, and July 1, 2019, PTR payments would be based on what for ease of reference can be referred to as "the Normal PTR Model" or "the 2015 PTR Model." These PTR models are materially different. The Association prefers one, the University the other. To say this was a flashpoint in the 2018 Article 6 negotiations would be an understatement. Nevertheless, on March 29, 2018, the parties reached a compromise in which they agreed to the University's preferred model in one year,

and the Association's preferred model in the other year. This agreement – and it is in my handwriting – was signed by representatives of both parties (“the March 29, 2018 Agreement”):

1.9% Year I – 2015 MOS PTR model and no flat dollar all ATB

2.0% Year II – normal PTR way it used to be done, 50/50

Paragraph 2 of the MOA, signed about a month later, following another mediation session, provided as follows:

COMPENSATION

(a) Salary

July 1, 2018 1.9% across-the-board salary increase

July 1, 2019 2.0% salary increase paid as follows:

1.0% across-the-board

1.0% paid as a flat dollar amount of \$1,630 per full-time member, pro-rated for part-time members

(b) PTR

PTR for July 1, 2018 utilizing the PTR model in the November 2015 Memorandum of Settlement and June 2017 Memorandum of Settlement and utilized beginning with the July 1, 2016 PTR exercise. For this purpose, the reference point will be \$163,970.

PTR for July 1, 2019 utilizing the PTR model used prior to the November 2015 Memorandum of Settlement – i.e. as last utilized with the July 1, 2015 PTR exercise.

PTR breakpoints and increments will move by 1.9% for the June 30, 2019 PTR exercise and by 2.0% for the June 30, 2020 PTR exercise.

As is obvious, the first two paragraphs of Paragraph 2(b) give effect to the March 29, 2018 Agreement. But what is required under the third paragraph (“the third paragraph”) and what is meant by the reference to the June 30, 2020, PTR exercise?

The Association says that it memorialized in the third paragraph the agreement reached by the parties for a third year of PTR, using the normal model, with the exercise to be completed by June 30, 2020, and payments made on July 1, 2020. PTR, it notes, has been consistently awarded since the early 1970s. The University disagrees: it takes the position that PTR was negotiated, and has been paid, for Year I (July 1, 2018) and Year II (July 1, 2019), as set out in the March 29, 2018 Agreement, and that any July 1, 2020, PTR payment must be the subject matter of current Article 6 negotiations.

Association Submissions

In the Association's view, the University has failed to comply with the MOA by its failure to implement and complete the June 30, 2020, PTR exercise: it has not made the July 1, 2020, payments that are owing to Association members for their performance in the 2019-2020 academic year using the breakpoints and increments as set out in the MOA and using the Normal PTR Model. (In the alternative, the matter of which model to use could be deferred to the 2020-2021 round of Article 6 negotiations.)

Faculty and librarians, the Association observed, have performed work during 2019-2020 and that work has been assessed through the normal collegial performance assessment processes. All of the required information is now available to administer and complete the June 30, 2020 PTR exercise. All that remains is to make the payment for performance in the 2019-2020 academic year, one of the two

years covered by the MOA and as provided by it. Even if the matter of which model to use remains unresolved, and subject to agreement, the obligation to complete the exercise and make the payment remained. Simply put, the University should not be allowed to renege on its contractual commitment to conduct and complete the PTR exercise and make the payments.

Ultimately, the Association pointed out, there was agreement on all of the parameters for the 2019-2020 PTR payment, except possibly the model. Yet, in the face of that, the University was taking the untenable position that there was no obligation to make a PTR payment for work performed in 2019-2020, unless it was negotiated in the current Article 6 bargaining round. However, in the Association's submission, the MOA said differently, as did the parties' past practice where there were numerous examples – enumerated and elaborated in the Association's brief and canvassed at the hearing – of the University expressly acknowledging that negotiated PTR parameters from previous years govern and direct a July 1st payment to be made following the end of a term.

There was nothing at all unusual about this, the Association pointed out. The practice was consistent: PTR was paid out on July 1st. Any previous delays were distinguishable from this case because they arose where there was no agreement on the governing parameters – the opposite of this case. Other than several completely distinguishable exceptions, the University had never previously taken the position that no PTR whatsoever would be paid unless and until the Association secured it in

a subsequent bargaining round (with an exception arising from the imposition in 1993 of the *Social Contract Act*).

The factual context, therefore, supported the Association's position, but so too did the law. In interpreting contracts, like the MOA, arbitrators must read the words used in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the agreement, its object and the intention of the parties. The primary question to be answered here was what did the parties intend by the words used in the third paragraph?

In answering that question, it was notable to the Association that the parties, in negotiating the provision at issue, never said anything like PTR "if any," or "for any June 30, 2020 PTR exercise." Instead, they negotiated for "the" June 30, 2020, PTR exercise, reflecting their mutual understanding that there would be such an exercise. Moreover, given the fact that PTR is always paid, even if it is sometimes delayed, had the University wished to alter this longstanding practice and change a central tenet in the compensation scheme, it was surely incumbent upon it to put the Association on notice of its intention to do so. Instead, as the MOA makes clear, the parties did not refer to the June 30, 2020, PTR exercise as an idle aside or a contingent exercise, but rather directed their minds to and agreed on how the breakpoints and increments would be increased by that exercise. This was the factual context to bring to the interpretative issue.

In all of this, the Association submitted that an agreement to use the Normal PTR Model was both reflected and addressed in the language used and in the negotiated parameters. Notably, where the parties have previously departed from the Normal PTR Model, they have made that clear; in this case they did not, leading to an irresistible inference that it should govern. Stated somewhat differently, had the parties intended the 2015 PTR Model to apply, the text would have been completely different, and this led to the conclusion that the Normal PTR Model governs.

Ultimately there was only one reasonable interpretation of the MOA. And that reasonable interpretation required the following: First, that there be a June 30, 2020, PTR exercise based on 2019-2020 performance. Second, that that exercise be implemented, and that there be PTR payments on or around July 1, 2020; payments in no way dependent on the outcome of the current negotiations as the parameters were already agreed and established. Third, that the Normal PTR Model be used.

Accordingly, and for all of these reasons and others, the Association asked for a finding that the University's refusal to complete the June 30, 2020, PTR exercise, with a payment to faculty and librarians on or about July 1, 2020, was in breach of the MOA. The Association asked for an order directing the University to implement the June 30, 2020, PTR exercise and make the PTR payments that are a part of and flow from that exercise using the Normal PTR Model. In the limited alternative, the Association submitted that even if the model was up for negotiation, the obligation

to complete the exercise and make the payments should nevertheless be affirmed. The Association asked me to remain seized with the implementation of my award.

University Submissions

Assuming for the sake of argument that there was jurisdiction under the MOA to consider and decide PTR issues on or after July 1, 2020 – an assumption which the University, needless to say, categorically rejected – it took the position, nevertheless, that there was nothing in the MOA, or in the negotiations or mediation that preceded it, that could lead to the outcome the Association sought.

To be sure, there was PTR settlement, and it was the one set out in the March 29, 2018 Agreement and reflected in the MOA. That agreement said nothing about Year III because there was no agreement on Year III. In this context, the Association's submission that there was a Year III PTR payment owing along with an agreement to use the Normal PTR Model was, in a word, unsustainable. To repeat, these were the words of the third paragraph:

PTR breakpoints and increments will move by 1.9% for the June 30, 2019 PTR exercise and by 2.0% for the June 30, 2020 PTR exercise.

These words, however, reflected nothing other than a longstanding practice of increasing PTR breakpoints and increments by the prior July 1 ATB percentage increase on the following June 30th. These words were completely different than the first two paragraphs with their specific language of the agreed-upon PTR payments. The first two paragraphs created obligations and entitlements; the third paragraph did neither.

All that was occurring here, in the University's submission, was an attempt by the Association to argue that a standard administrative practice, or agreement, that PTR breakpoints and increments are adjusted on June 30 by the prior July 1 percentage ATB increase, somehow meant that in the MOA the parties agreed to all issues related to the July 1, 2020, PTR, including the PTR model to be used. PTR was a significant issue in every bargaining round, but the Association was trying to piggyback on the now expired MOA an outcome for 2020-2021, and it was doing so when the 2020-2021 Article 6 negotiations were already underway. The Association's invitation to do so, the University submitted, should be declined.

Indeed, in the University's view, there was nothing new about its approach. It has for some time been the case that issues relating to PTR are part of Article 6 negotiations. In the round preceding the MOA, for instance, the University's position was communicated to the Association in a letter from Professor Kelly Hannah-Moffat, the Vice-President, Human Resources & Equity, to Association president Cynthia Messenger dated May 27, 2017:

As you know, it has been and remains the University's position that PTR is part of Article 6 salary and benefits negotiations each round and that from time to time UTFA and the University have agreed that normal PTR will be implemented prior to a resolution of the Article 6 negotiations, on a without prejudice or precedent basis.

The University is proposing that normal PTR...be implemented effective July 1, 2017 on a without prejudice or precedent basis....

We trust that you will be in agreement with this proposal, so that PTR can be distributed to faculty members and librarians effective July 1, 2017....

Reference was also made to other documents where the University, with the Association's knowledge, likewise expressed this very same view.

The fact of the matter was that in each bargaining round, no matter what the model, the parties in their Article 6 bargaining negotiate specific PTR contours, as was apparent from the University's review of past bargaining outcomes and awards, as it set out in its brief, and as it canvassed at the hearing. In cases where changes took effect in Year I of a new agreement, they necessarily applied to the PTR performance evaluation period that occurred the previous academic year, that is to say, the final year of the previous settlement or award. Examples on point were provided.

In no case, the University observed, did any negotiated settlement or award stipulate or require that the University pay out PTR relating to the PTR evaluation period that coincided with the last academic year in which the prior settlement remained in force. Instead, that issue was always addressed in the following bargaining round. This was because, the University pointed out, both parties have sought changes to PTR entitlements. For an agreement ending on June 30th of a specific year, the negotiation or awarding of the PTR model to be used on July 1st of that same calendar year was addressed as part of the subsequent round of Article 6 negotiations.

It was true enough that on earlier occasions the University had paid out PTR for faculty performance in the final academic year of a prior settlement or award. This case, however, was about the MOA and that meant the focus must necessarily be on its language considered in context. And that context supported the University's interpretation.

To begin, there was the May 27, 2017, letter from Professor Hannah-Moffat to the Association president referred to above. Professor Messenger agreed to the University's proposal concerning the payment of PTR during a negotiating year, where the terms of the subsequent agreement or award had not been concluded. The Association did not take the position then – the position that it was taking now – that the University was obligated to make the PTR payments for July 1, 2017, based on the language of the soon to be expired Memorandum of Settlement (it was scheduled to end on June 30, 2017).

This, and other evidence, demonstrated that in the time period immediately before the negotiations and finalization of the MOA, there was no past practice or shared understanding obligating the University to pay out PTR awards on July 1, 2020, arising out of the MOA. Any previous PTR payments that were made prior to the completion of Article 6 negotiations were made on the basis of an agreement with the Association such as the one in 2017 or, in another example, and it is one of several the University referred to, in 2009, when the University initially communicated in a bargaining year that it would not be making a PTR payment but then agreed to implement PTR awards before negotiations were completed.

In all of these cases, the decision to proceed in this manner was unconnected to a contractual provision in a prior settlement because there was no such provision and no obligation or entitlement. Overall, the evidence established, the University submitted, that the University made it consistently clear that the assessment period

that occurred during the final academic year of a settlement would not result in a PTR award until the Article 6 bargaining and dispute resolution process was completed, unless there was an independent agreement to do so.

Given this context, it was hard for the University to understand how the Association could say that the University was doing anything other than following its normal negotiating approach: and that was to determine in the current bargaining round, just like the parties did in the last one with Years I and II, what the PTR payment, if any, would be for the successor agreement. The parties did not decide in 2018 what the PTR payment would be in the first year of a future agreement. A review of the negotiating history leading to the March 29, 2018 Agreement and the MOA reinforced this point: the only PTR payments that were provided for were the payments on July 1, 2018, and July 1, 2019. Nothing in either the March 29, 2018 Agreement or MOA reflected an agreement requiring a July 1, 2020, PTR payment or the model that would be used.

And nothing, the University continued, that had happened since, for example, the COVID-19 related extension of deadlines for the annual performance evaluation process, changed the University's obligations or the Association's entitlements. In announcing that extension on March 25, 2020, Vice-Provost Heather Boon wrote:

We do not have an agreement with UTFa on compensation for faculty and librarians for July 2020. We will issue a further memo concerning compensation and the performance evaluation process as soon as possible. Any increases will be retroactive to July 1, 2020.

The University was transparent on March 25, 2020, and on many other earlier occasions, that PTR entitlements for the last academic year of an agreement, or an award, were part and parcel of the Article 6 negotiations for the next agreement or award. For all of these reasons and others, the University asked for a finding that there was no MOA breach.

Award

Having carefully considered the evidence and submissions of the parties, it is my conclusion that there has been no MOA breach.

The March 29, 2018 Agreement was memorialized in the MOA. But the MOA went further and it included the third paragraph. And that is the provision that has to be interpreted and applied. To be sure, it envisages a PTR exercise, and it sets out *some* of the parameters but, upon the most careful consideration, it does not establish a Year III PTR payment obligation on July 1, 2020. The March 29, 2019 Agreement and the MOA give effect to the agreement that there will be two PTR payments: one on July 1, 2018, and one on July 1, 2019. It cannot be fairly said that this is “the first time since PTR was introduced at the University...that the Administration has had, prior to the end of the academic year in question, an agreement on all parameters necessary for the calculation of the PTR owing....yet has refused to complete the PTR exercise for that year....” There is no agreement on payment – for example, “PTR for July 1, 2020....” – and no agreement on the model where such agreement is a critical issue of contention between the parties.

This what the MOA says:

PTR for July 1, 2018 utilizing the PTR model in the November 2015 Memorandum of Settlement and June 2017 Memorandum of Settlement and utilized beginning with the July 1, 2016 PTR exercise. For this purpose, the reference point will be \$163,970.

PTR for July 1, 2019 utilizing the PTR model used prior to the November 2015 Memorandum of Settlement – i.e. as last utilized with the July 1, 2015 PTR exercise.

PTR breakpoints and increments will move by 1.9% for the June 30, 2019 PTR exercise and by 2.0% for the June 30, 2020 PTR exercise.

What the MOA provides for is payment in Year I, and payment in Year II using identified models. What it does not say, or provide for, is payment on July 1, 2020, effectively a Year III. The parties chose clear language and payment dates to reflect the obligations, and entitlements, not to mention the model to be applied, in Year I and Year II. They clearly knew exactly what they were doing, and if they had wanted to expand that March 29, 2018 Agreement and provide for a PTR payment in Year III on July 1, 2020, they could have easily done so, and they would have identified the model, among other missing features such as specifying the payment and its date. It is axiomatic that they would have used the same language they agreed upon for Year I and Year II. It is equally obvious that they did not do this. On this basis alone, on the construction of the actual words of the provision, and on its objective interpretation, the Association's allegation of breach can be dismissed. However, this conclusion is reinforced for many other reasons.

It is trite but true that entitlement to monetary benefits must be express, explicit, clear and unambiguous. The disputed provision of the MOA, the third paragraph, does not meet that test, on its own, but especially when considered together with

the rest of the provision. Factual context matters, but the overall text is the first place to start. What does it say, and what does it not say? We know the words the parties chose when they wished to confer a monetary benefit – they are found in the March 29 2018 Agreement and they are, by and large, replicated in the MOA. The third paragraph uses completely different words. All that the parties had to do, if they wished to provide for a Year III, was adopt the architecture in the previous provisions.

The absence of a PTR model is particularly telling given the time and attention the parties gave to this issue in their mediation briefs leading to the MOA, not to mention at the mediation itself. It would be completely improper to read into the third paragraph the Normal PTR Model. Where the parties agreed on what model to use, they said so. It is simply not reasonable to conclude that the parties were very clear about what would happen and when in Year I and Year II, including the model, and that they also agreed on a Year III, a year that falls outside of term, and use completely different language and a completely different architecture to say so (all the while not identifying the date or the governing model or providing a process for its determination).

One underlying assumption to be brought to bear in an interpretative case like this one is that the parties meant what they said and said what they meant. Not identifying payment dates, and especially not identifying a model, is a rather strange lacuna given the time and attention that issue attracted during bargaining. The

movement of breakpoints and increments by an amount equivalent to the prior year's ATB are just two of a number of features of the PTR scheme. Considered by themselves, these references do not establish a legal entitlement to PTR payment. It is certainly worth mentioning that these PTR payments are central to the compensation scheme because they are valuable to Association members and costly to the University. It is inconceivable that experienced bargainers in a mature bargaining relationship would negotiate this kind of benefit but markedly depart from their standard language in doing so (and within the same paragraph).

Moreover, to accept the Association's overall interpretation, one would have to ignore the actual words of the provision and the factual context, although admittedly past practices are disputed and subject to alternative characterizations.

What we do know is that there is substantial evidence that PTR has previously been regularly and routinely implemented prior to the conclusion of Article 6 negotiations. The Association's brief is replete with examples. In general, faculty and librarians have not usually had to await the conclusion of the Article 6 negotiations to receive PTR payments. But there are also examples where the University has said no PTR until Article 6 negotiations have been completed, but subsequently made the payments nevertheless. This approach is reflected in the May 27, 2017, letter from Professor Hannah-Moffat to Professor Messenger (paraphrasing): we can and do choose to pay in advance of an Article 6 outcome, but we are not required to do so. It would be hard to find, in these circumstances, that the University had some kind of

obligation to notify the Association in the 2018-2020 round about its approach and understanding where the evidence indicates that it had just done so in 2017. As well, and going back to what the parties actually agreed to in writing on two occasions in 2018, in the March 29, 2018 Agreement and in the MOA, they did not negotiate a Year III.

It is also legally and factually relevant that in the round of Article 6 bargaining round immediately preceding the MOA the parties, on June 13, 2017, agreed on the following language:

PTR: Continue the new PTR model that became effective July 1, 2016 as set out in the November 21, 2015 MOS for July 1, 2017 PTR and PTR breakpoints will move by 1.75% for the June 30, 2018 PTR exercise.

The Association never took the position that this language from this earlier settlement regarding the movement of the PTR breakpoints by the equivalent of the prior year's ATB increases obligated the University to make a July 1, 2018, PTR payment prior to conclusion of the 2018-2020 round, and separate and apart from it. Perhaps that was because there was no suggestion that PTR might not be paid. Nevertheless, to the extent that the factual context matters, when the parties met leading to the March 29, 2018 Agreement, and the MOA, they bargained about PTR for July 1, 2018, including the model for calculating PTR, for teaching, research and service in the previous academic year, exactly what the University says should happen here.

Stated somewhat differently, in the March 29, 2018 Agreement, and in the MOA, the parties agreed to a July 1, 2018, PTR payment for work performed in the previous academic year (2017-2018) which was under previous minutes of settlement. Yet, in this case, the Association claims that the PTR payment for July 1, 2020, has already been negotiated based on the third paragraph, a provision that is remarkably similar to the language used in 2017, when no such claim was made, leaving the parties to bargain, which they did in the many-month mediation leading to the MOA, about the PTR payment for July 1, 2018, including reaching agreement on the model.

Quite clearly, a PTR exercise in the final year of a settlement or award, along with agreement on some of the features of a forthcoming PTR process, does not establish a PTR entitlement in the first year of the subsequent agreement. And, for whatever this observation is worth, it needs to be mentioned that when the Association explained the MOA to its members, nothing was said about a Year III obligation or entitlement.

If the third paragraph does not provide for a Year III, what does it mean? In my view, it sets out the longstanding practice of increasing the June 30th PTR breakpoints and increments by the prior July 1st ATB. The movement of breakpoints and increments in line with the prior year's ATB is just one of a number of elements of a PTR exercise – a conclusion that is reinforced in the documentary record. Specifying these features for a future entitlement does not complete the exercise or require the PTR payment, especially in circumstances where the selection of a model is of

material importance to the parties; it has been hugely contested in the last several bargaining rounds. But whether this view is correct or incorrect, what the language does not do is provide for a Year III PTR payment. It does not create a legal obligation to make a payment, or an entitlement to receive one, on July 1, 2020. Had the parties wished to negotiate that they were free to do so and, experience indicates, would have used the same language they agreed upon for the July 1, 2018, and July 1, 2019, payments.

There is simply no basis, interpreting the words at issue, certainly on their own, but also in a broader factual context, to conclude that there is any obligation on the part of the University in the third paragraph to make a PTR payment on July 1, 2020. In fact, there is no such obligation. Having said all of that, however, one can easily understand why the Association has strenuously raised its concerns in the face of an assertion that its members may have no entitlement whatsoever as there is clearly an expectation that there will be PTR payments, an expectation arising from the third paragraph, from the collegial exercise that has already taken place, and even more importantly, one arising from the central role that PTR has played, without exception, for decades in faculty and librarian compensation. PTR payments have always been made.

As Arbitrator Munroe observed in his June 18, 1993 Salaries and Benefits award for these parties:

...it is simply not realistic for the Governing Council to expect us to restrict or limit the ongoing operation of the PTR scheme. We believe that both parties regard the PTR scheme as being at the

heart of their bargaining relationship; that neither party would truly wish to jeopardize the scheme – nor the bargaining stability which it affords – except as the last resort in the most extreme fiscal distress (at 13).

Whether current economic circumstances justify a departure from the long-established pattern is a matter for the parties to address in their ongoing Article 6 negotiations. In the meantime, the March 29, 2018 Agreement and the MOA – the documents that reflect the deal that the parties reached – cannot be interpreted so as to require a PTR payment on July 1, 2020. That being the case, any July 1, 2020 PTR payment (arising from the 2019-2020 PTR exercise assessing the work performed in that year), is a matter for bargaining under Article 6. If that bargaining is unsuccessful in reaching a settlement, it then becomes a matter for dispute resolution under the Memorandum of Agreement. In the meantime, the Association’s request for a declaration and an order is dismissed.

Conclusion

Accordingly, and for the foregoing reasons, I conclude that I have the jurisdiction to consider the dispute as it does materially concern “the implementation, interpretation, administration, application or alleged breach of the terms and conditions” of the MOA, but that there has been no breach.

DATED at Toronto this 4th day of January 2021.

“William Kaplan”

William Kaplan, Mediator/Arbitrator