Federal Court of Appeal | Cour d'appel fédérale

Date: 20260108

Docket: A-133-24

Citation: 2026 FCA 1

CORAM: **WOODS J.A.**
MACTAVISH J.A.
WALKER J.A.

BETWEEN:

CANADIAN PACIFIC KANSAS CITY RAILWAY

Applicant

and

DARREN J. ARTHUR and
ATTORNEY GENERAL OF CANADA

Respondents

Heard at Toronto, Ontario, on October 6, 2025.

Judgment delivered at Ottawa, Ontario, on January 8, 2026.

REASONS FOR JUDGMENT BY: WALKER J.A.

CONCURRED IN BY: WOODS J.A.
MACTAVISH J.A.

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REASONS FOR JUDGMENT

WALKER J.A.

[1] Canadian Pacific Kansas City Railway (CPKC), the applicant and employer of the respondent, Mr. Darren Arthur, applies for judicial review of the decision of the Canada Industrial Relations Board (the Board) dated March 11, 2024 (2024 CIRB 1114) (the Decision).

In its Decision, the Board dismissed CPKC's appeal of a payment order of a labour affairs officer (LAO) with the Labour Program of Employment and Social Development Canada establishing Mr. Arthur's "regular rate of wages" for one day of paid personal leave under Part III of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the *Code*). The Teamsters Canada Rail Conference (TCRC) is the certified bargaining agent for Mr. Arthur and acts on his behalf in this application.

[2] The issue before the Court stems from a 2019 amendment to the *Code* that permits employees to take up to five days of personal leave annually, the first three of which are paid leave days if the employee has completed three consecutive months of continuous employment with the employer: subsections 206.6(1) and (2) of the *Code*. The employee's pay for the paid personal leave days is to be calculated at "their regular rate of wages for their normal hours of work": subsection 206.6(2) of the *Code*. If an employee's daily hours of work vary, the employee must be compensated for a day of personal leave using either the average of their daily earnings for the 20 days of work immediately preceding the leave or the method set out in the collective agreement governing the relationship between the employer and employee: subsection 17(a) or (b) of the *Canada Labour Standards Regulations*, C.R.C., c. 986 (the Regulations).

I. Facts

[3] On January 24, 2021, Mr. Arthur, a train conductor for CPKC, took a day of personal leave. CPKC did not dispute that Mr. Arthur was entitled to be paid for the day and calculated the wages to which he was entitled using the basic daily rate of pay for brakepersons under the

collective agreement then in place between CPKC and TCRC (the Collective Agreement or Agreement). CPKC paid Mr. Arthur $193.19 in respect of the day of personal leave.

[4] On the date he took the personal leave, Mr. Arthur was on the spareboard, filling conductor and brakeperson vacancies. His hours of work varied from day to day, as did his daily earnings. Mr. Arthur's daily compensation depended on a number of factors, including the terminal from which he worked, the number of miles travelled that day and certain available allowances. Based on the pay information submitted to the Board, Mr. Arthur had worked as a conductor for the majority of the 20 workdays prior to January 21, 2021.

[5] Mr. Arthur filed a monetary complaint with the Labour Program alleging that CPKC had not compensated him correctly for the personal leave day. The LAO determined that CPKC had underpaid Mr. Arthur for the personal leave by relying on subsection 17(b) of the Regulations and the basic rate of pay set out in the Collective Agreement. The LAO recalculated the required payment to Mr. Arthur using his average earnings of the previous 20 workdays pursuant to subsection 17(a). The Head of Compliance and Enforcement of the Labour Program (the Head) subsequently revised the LAO's calculated amount to $569.38 to remove payments related to work performed that required Mr. Arthur to be away from his home terminal (known as "payments for being held away").

[6] CPKC requested a review of the LAO's payment order and the Head referred the request to the Board as an appeal pursuant to subsection 251.101(7) of the *Code*.

[7] CPKC disagreed with the LAO's conclusion that the Collective Agreement did not deal with the calculation of wages in respect of a day of personal leave for purposes of section 206.6. CPKC acknowledged that the Agreement does not specifically reference personal leave but argued before the Board that the Agreement nevertheless contemplates circumstances where employees may require a leave of absence to deal with personal matters and that the "basic day" defined in the Collective Agreement had been consistently used by the parties to calculate wages in a variety of situations. CPKC took the position that the basic day payment method is the applicable method of calculation of a day's wages for personal leave for employees whose terms of employment are governed by the Collective Agreement and maintained its reliance on subsection 17(b) of the Regulations.

II. Relevant provisions of the *Canada Labour Code*

[8] For ease of reference, subsections 206.6(1) and (2) of the *Code* read as follows:

Personal Leave	**Congé personnel**
Leave – five days	**Congé : cinq jours**
206.6 (1) Every employee is entitled to and shall be granted a leave of absence from employment of up to five days in every calendar year for	**206.6 (1)** L'employé a droit, par année civile, à un congé d'au plus cinq jours pour les raisons suivantes :
(a) [Repealed, 2021, c. 27, s. 6]	**a)** [Abrogé, 2021, ch. 27, art. 6]
(b) carrying out responsibilities related to the health or care of any of their family members;	**b)** s'acquitter d'obligations relatives à la santé de tout membre de sa famille ou aux soins à lui fournir;

(c) carrying out responsibilities related to the education of any of their family members who are under 18 years of age;

(d) addressing any urgent matter concerning themselves or their family members;

(e) attending their citizenship ceremony under the *Citizenship Act*; and

(f) any other reason prescribed by regulation.

c) s'acquitter d'obligations relatives à l'éducation de tout membre de sa famille qui est âgé de moins de dix-huit ans;

d) gérer toute situation urgente le concernant ou concernant un membre de sa famille;

e) assister à sa cérémonie de la citoyenneté sous le régime de la *Loi sur la citoyenneté*;

f) gérer toute autre situation prévue par règlement

Leave with Pay

(2) If the employee has completed three consecutive months of continuous employment with the employer, the employee is entitled to the first three days of the leave with pay at their regular rate of wages for their normal hours of work, and such pay shall for all purposes be considered to be wages.

Rémunération

(2) Si l'employé travaille pour l'employeur sans interruption depuis au moins trois mois, les trois premiers jours du congé lui sont payés au taux régulier de salaire pour une journée normale de travail; l'indemnité de congé qui est ainsi accordée est assimilée à un salaire.

[9] In addition, subsections 17(a) and (b) of the Regulations provide that:

Regular Rate of Wages for Purposes of General Holidays, Personal Leave, Leave for Victims of Family Violence, Bereavement Leave and Medical Leave

17 For the purposes of subsections 206.6(2), 206.7(2.1), 210(2) and 239(1.3) of the Act, the regular rate of wages of an employee whose

Taux régulier de salaire pour les jours fériés, les congés personnels, les congés pour les victimes de violence familiale, les congés de décès et les congés pour raisons médicales

17 Pour l'application des paragraphes 206.6(2), 206.7(2.1), 210(2) et 239(1.3) de la Loi, le taux régulier du salaire d'un employé dont la durée du

hours of work differ from day to day or who is paid on a basis other than time shall be	travail varie d'un jour à l'autre ou dont le salaire est calculé autrement qu'en fonction du temps est égal :
(a) the average of the employee's daily earnings, exclusive of overtime hours, for the 20 days the employee has worked immediately preceding the first day of the period of paid leave; or	**a)** soit à la moyenne de ses gains journaliers, exclusion faite de sa rémunération pour des heures supplémentaires fournies, pendant les vingt jours où il a travaillé immédiatement avant le premier jour de la période de congé payé ;
(b) an amount calculated by a method agreed on under or pursuant to a collective agreement that is binding on the employer and the employee.	**b)** soit au montant calculé suivant une méthode convenue selon les dispositions de la convention collective liant l'employeur et l'employé.

III. Decision of the Board

[10] The appeal proceeded as a trial *de novo* involving four days of hearings during which the Board considered oral and documentary evidence and submissions from the parties. Mr. Arthur's appeal is one of several before the Board that raise the same issue and involve the same employer, CPKC. The Board and the parties agreed to hold the other appeals in abeyance pending the outcome of Mr. Arthur's case.

[11] The issue for the Board, and now this Court, can be simply stated: whether a CPKC employee whose terms of employment are governed by the Collective Agreement and whose hours of work vary must be compensated for personal leave days based on the calculation method set out in subsection 17(a) or subsection 17(b) of the Regulations.

[12] The Board's analysis addressed three questions: (1) the interpretation of section 17 of the Regulations; (2) whether the "basic day", as defined and used in the Collective Agreement, is a method of calculation agreed by the parties for the purpose of section 17(b); and (3) if not, whether the provisions of the Collective Agreement that provide for other types of paid leave, particularly bereavement leave, could be considered analogous to a provision establishing payment for personal leave.

A. *Section 17 of the Regulations*

[13] The Board approached the interpretation of section 17 of the Regulations in accordance with the principles of statutory interpretation confirmed in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 117 (*Vavilov*): the words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" [citations omitted]. The Board observed that the minimum labour standards set out in Part III of the *Code* are provisions of public interest and that the personal leave provision introduced in section 206.6 aims to mitigate the financial consequences of an absence from work for personal reasons: Decision at para. 42.

[14] The Board noted that section 17 of the Regulations was in place prior to the 2019 amendments to the *Code* that introduced paid personal leave. At that time, the section provided for the calculation of a regular rate of wages for bereavement leave. Section 17 was amended in 2019 to extend to personal leave and leave for victims of family violence: Decision at para. 43.

[15] Contrary to the Head's position, the Board found no requirement in section 17 that, for subsection 17(b) to apply, a collective agreement must provide for a method of calculating regular wages specific to personal leave: Decision at paras. 45, 47, 50. The Board stated that section 17 is general in nature and applies to all three types of leave.

[16] The Board also stated that the fact the Collective Agreement does not include a method for calculating pay in the event of personal leave does not resolve the issue. In the absence of a provision specific to the calculation of payment for personal leave, the Board must review the Collective Agreement and determine whether it could infer that CPKC and TCRC turned their minds to establishing a method for calculating an employee's regular rate of wages that would extend to paid personal leave: Decision at para. 51. In so doing, the Board must be mindful of the overall objective of section 206.6 and paid personal leave: Decision at para. 52.

B. *"Basic Day" as defined and used in the Collective Agreement*

[17] CPKC's principal argument before the Board was that the "basic day" contained in the Collective Agreement is a method agreed by the parties that is consistently used to calculate wages in many situations and, further, that it is clear the parties to the Agreement agreed on the basic day as the method to be used to calculate the regular rate of wages for an employee who takes personal leave as contemplated by section 206.6 and subsection 17(b).

[18] A basic day is defined in article 4.01 of the Collective Agreement as follows:

> **4.01 BASIC DAY STRAIGHTAWAY AND TURNAROUND SERVICE**
>
> In all freight, mixed, unassigned passenger, light running (engine and caboose), pusher and helper service, 100 miles or less, 8 hours or less, constitute a day's work, exclusive of payment for switching, initial terminal destination and time at turnaround points.

[19] The Board began its analysis by noting that the basic day has been included in the Collective Agreement for a long time and is referred to in several articles, none of which relate to a leave of absence from work. The Board then made a number of critical evidentiary findings regarding the method of payment for conductors, the application of the basic day in practice and Mr. Arthur's actual pay prior to his personal leave day: Decision at para. 56. The Board concluded that a basic day was paid in limited circumstances (e.g. when an employee is called to the terminal but the assigned train does not start) and was not a regular or frequent occurrence.

[20] The Board emphasized the purpose of the personal leave with pay provision in the *Code* and, based on its evidentiary findings, described the basic day as a minimum payment paid in limited circumstances: Decision at para. 57. In one passage heavily criticized by CPKC in this application, the Board stated that the basic day is a minimum payment and "does not represent what the employee could have expected to earn under normal circumstances": Decision at para. 59.

[21] The Board concluded that the basic day was not contemplated by the parties as a method of calculating wages to compensate employees for any of the types of leave set out in section 17 and is not a method agreed to by the parties for purposes of subsection 17(b) of the Regulations.

C. *Other provisions of the Collective Agreement*

[22] The Board requested evidence from the parties regarding other provisions in the Collective Agreement to determine if the parties had contemplated the basic day or another method of calculating pay for types of leave analogous to personal leave. The Board focused on the bereavement leave provision in the Agreement, finding that bereavement leave is comparable to personal leave and noting that an employee who takes bereavement leave is paid the amount they would have earned had they not missed their tour of duty. However, the Board concluded that the Collective Agreement contemplates various types of leave, paid and unpaid, and does not provide for any one method of calculating wages for the purpose of such varied types of leave.

[23] Although similar in purpose to personal leave, the Board found that there was no indication the parties intended for the method of calculating wages for bereavement leave to apply to other analogous types of leave. The Board was not, therefore, prepared to infer that the agreed payment for bereavement leave could be extended personal leave: Decision at para. 77.

[24] Finally, the Board rejected the Head's argument that section 168 of the *Code* precluded reliance on the bereavement leave provision of the Collective Agreement because the provision could result in payment of an amount inferior to the amount the employee would have received

pursuant to subsection 17(a) of the Regulations. In the Board's view, the Head's position would render subsection 17(b) meaningless. The Board stated that the legislation "specifically recognizes the parties' ability to negotiate and agree" on a calculation method when an employee's hours of work vary: Decision at paras. 83, 87.

[25] The Board ultimately found that the LAO did not err in determining that the parties had not agreed in the Collective Agreement to a method of calculating a regular rate of wages for personal leave for purposes of section 17 of the Regulations. The Board also found that payments for being held away are to be included in the calculation of Mr. Arthur's earnings for his personal leave day pursuant to subsection 17(a).

IV. Issue and standard of review

[26] The sole issue before the Court is whether the Board's Decision was reasonable when reviewed against the analytical framework established by the Supreme Court of Canada in *Vavilov*. The *Vavilov* framework applies both to the Board's interpretation of section 206.6 of the *Code* and section 17 of the Regulations, and to its factual findings and review of the Collective Agreement.

[27] The Supreme Court of Canada has stated clearly that matters of statutory interpretation are reviewed for reasonableness: *Vavilov* at para. 115; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras. 68-69 (*Mason*). The reviewing court does not conduct a *de novo* analysis of the statutory provisions at issue. It considers the decision under review as a

whole, including the reasons given and the outcome reached to determine whether the administrative decision maker's statutory interpretation was reasonable: *Vavilov* at para. 116, cited in *Mason* at para. 68.

V. Analysis

[28] The Collective Agreement that governed the terms of Mr. Arthur's employment in January 2021 was negotiated and finalized in April 2019, before the amendment to the *Code* to add section 206.6 and paid personal leave. It is common ground among the parties that the Collective Agreement could not and does not include a specific provision addressing the calculation of a regular rate of wages for purposes of section 206.6 of the *Code* and subsection 17(b) of the Regulations for employees whose hours of work vary.

A. *The Board's interpretation of section 17 of the Regulations and analysis of the basic day*

[29] CPKC first submits that the Board made a serious error of law in its interpretation of section 17 of the Regulations. In CPKC's view, the Board's erroneous interpretation of those statutory provisions permeates the Decision and resulted in a reversible error by the Board in failing to conclude that the basic day payment method in the Collective Agreement is a method of calculating a regular rate of wages for personal leave agreed by the parties within subsection 17(b).

[30] CPKC prefaces its submission by stating that subsection 17(b) of the Regulations permits employers to contract out of the calculation method for a regular rate of wages contained in subsection 17(a) (the 20-workday average of the employee's earnings) subject only to the constraint that the calculation be enshrined in a collective agreement that is binding on the employer and the employee. CPKC argues that the Board read an additional and extraneous constraint into subsection 17(b) by imposing a minimum requirement that the agreed calculation method must reflect what the employee could have expected to earn if they had worked the personal leave day. This, CPKC states, is an error that necessitates the intervention of the Court because such a requirement finds no basis in subsection 17(b) and led the Board to unreasonably discard the basic day provision as a calculation method agreed by the parties within the scope of subsection 17(b).

[31] For the reasons that follow, I find no error in the Board's interpretation of section 17 of the Regulations that renders its analysis and conclusions unreasonable. Contrary to CPKC's argument, the Board did not interpret the section as imposing a minimum payment entitlement in order for an agreed calculation method to fall within subsection 17(b). I will return to this argument later in these reasons in the context of the Board's application of its interpretation of section 17 to the Collective Agreement.

[32] The Board properly interpreted section 17 of the Regulations by reviewing the text, context and purpose of the section, with attention to the context and purpose of Part III and, more specifically, section 206.6 of the *Code*: *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, 2005 SCC 26 at paras. 37-38. The Board began by noting that the minimum labour standards set

out in Part III of the *Code* are provisions of public interest that "protect individual workers and create certainty in the labour market by providing minimum labour standards and mechanisms for the efficient resolution of disputes arising from its provisions": *Dynamex Canada Inc. v. Mamona*, 2003 FCA 248 at para. 35, leave to appeal to SCC refused, 29932 (March 4, 2004).

[33] As discussed above, the Board referred to the introduction of section 206.6 to the *Code* in 2019 and stated that the "personal leave provision is essentially aimed at mitigating the financial consequences of an absence from work due to specific personal obligations": Decision at para. 42. Subsection 206.6(2) establishes an employee's entitlement to three days of paid personal leave at their "regular rate of wages for their normal hours of work". The mechanism for calculating an employee's pay entitlement for personal (and other) leave when the employee does not have a regular rate of pay is contained in section 17. The Board noted that the Regulatory Impact Analysis Statement accompanying the 2019 amendments to section 17 indicated that the object of the personal leave provision was, in part, to assist employees in achieving work-life balance.

[34] The Board rejected the argument put forward by the TCRC and Head that a collective agreement must set out a method of calculating the regular rate of wages specific to paid personal leave to fall within subsection 17(b). The Board found that the subsection contained no suggestion that the method of calculation must be specific to each type of leave within its scope (General Holidays, Personal Leave, Leave for Victims of Family Violence, Bereavement Leave and Medical Leave): "[t]here is no language to this effect in section 17 of the *Regulations*"

(Decision at para. 50). The Board stated that such specificity is not required even when considering the overall purpose of the *Code*.

[35] The Board concluded its statutory interpretation as follows:

> [51] This provision recognizes that the parties to a collective agreement may have contemplated a method of calculating a regular rate of wages for certain circumstances. The collective agreement must be reviewed to determine whether the parties turned their minds to establishing a method of calculation for a regular rate of wages that would be applicable to personal leave.
>
> [52] That said, in reviewing and assessing the method that may be established in the collective agreement, the Board must be cognizant of the overall objective of the paid leave, which is to minimize the financial and employment-related impacts on the employees requiring such leave.

[36] In my view, these two paragraphs are the critical elements of the Board's statutory interpretation, which the Board then applied to its review of the Collective Agreement and the basic day. I find that the Board did not read into the subsection any additional requirement, whether a minimum entitlement or a requirement for specificity. The Board reasonably analyzed the text of section 17 and declined to add to the plain text of subsection 17(b) a requirement that a collective agreement must include a provision that relates to personal leave specifically. The Board also refused to interpret subsections 17(a) and (b) as providing for a "greater of" calculation to avoid eviscerating Parliament's purpose in enacting subsection 17(b) which highlights the importance of collective agreements. Finally, it is far from unreasonable for the Board to have identified the purpose and objective of section 206.6 and section 17 as necessary

elements of its interpretation of subsection 17(b) and to have applied its interpretation of the two provisions purposively to its analysis of the Collective Agreement and the basic day.

[37] It follows that the Board's interpretation of section 17 of the Regulations does not undermine employers' and employees' freedom to contract and to enter into collective agreements establishing their own terms and conditions of employment, as argued by CPKC.

[38] In addition, I find no departure by the Board from precedent or longstanding practice in this regard. CPKC's argument to this effect in reliance on paragraphs 112 and 131 of *Vavilov* is not persuasive and I would make two observations.

[39] First, central to the Board's Decision as a whole and its analysis of section 17 is the fact that the Collective Agreement does not contain a specific or obvious provision establishing a calculation method for a regular rate of wages for paid personal leave taken by an employee in reliance of section 206.6 of the *Code*. The parties do not dispute this fact. Therefore, the Board made no determination as to whether a particular provision in the Collective Agreement governing payment for personal leave was or was not within the scope of subsection 17(b). The question was not before the Board.

[40] Second, neither the Board's statutory interpretation nor its review of the Collective Agreement contradicted or undermined the precedent cases relied on by CPKC. In one of those cases, *Teamsters Canada Rail Conference (CTY-WEST) v. Canadian National Railway Company,* 2022 CanLII 112672 (CA LA) (*Teamsters Canada*), an arbitration under the *Code*, the

arbitrator cited a prior case to emphasize that an arbitrator "cannot rewrite the parties' agreement": *Teamsters Canada* at paras. 23-24, citing *Compass Minerals Canada Corp. v. Unifor Local 37-0*, 2017 CanLII 72647 at para. 23. Here, the Board did not attempt to re-write the Collective Agreement; it considered the Agreement carefully to ascertain the parties' intention, bearing in mind the object of paid personal leave and the text and context of section 17.

[41] Further support for this conclusion is found in the Board's rejection of the argument by the Head that the parties to the Collective Agreement cannot rely on the bereavement leave provision (discussed below) as an agreed calculation method for paid personal leave because it results in a lesser payment in some cases than a payment calculated using subsection 17(a). The Board's analysis of the argument was not necessary to the disposition of the appeal but is an endorsement of the importance of collective agreements in labour relations matters: "[t]he legislation specifically recognizes the parties' ability to negotiate and agree on a method for the purpose of calculating payment when the hours of work differ from day to day and payment is made on a basis other than time": Decision at para. 83. The Board stated that the purpose of subsection 17(b) is to recognize that the parties to a collective agreement may negotiate a calculation method for rates of wages to provide certainty to the workplace and to "ensure an employee does not suffer a wage loss when taking personal leave": Decision at para. 87.

[42] As stated above, I find no error in the Board's interpretation of section 17 that warrants the intervention of the Court. The Board undertook a detailed and purposive review of the section and its enabling statutory context, with specific reference to the unambiguous text of

subsection 17(b). There can be no question but that the Board was required to clearly demonstrate in its Decision that it was alive to the text, context and purpose of section 206.6 of the *Code* and section 17 of the Regulations: *Canadian National Railway Company v. Canada (Transportation Agency)*, 2025 FCA 184 at para. 44 (*CNRC 2025*), citing *Mason*. The same is true for its application of the statutory analysis to the evidence: *CNRC 2025* at para. 44. The Board's statement that the objective of the legislation regarding paid personal leave is to minimize financial consequences to affected employees is a continuation of its purposive and contextual interpretation of section 17 and, as I will now discuss, provides a framework for the application of section 17 to the Collective Agreement, the basic day and the evidence.

[43] CPKC maintains its position that the basic day payment method set out in article 4.01 of the Collective Agreement is an agreed calculation method applicable to personal leave for the purposes of section 17(b) of the Regulations. This argument, made by CPKC primarily as a challenge to the Board's statutory interpretation analysis, is better considered as part of CPKC's submissions contesting the Board's analysis of the Collective Agreement.

[44] CPKC insists that the Board unreasonably rejected the basic day payment method due to its unwarranted focus on whether the basic day reflects what an employee could have expected to earn had they worked the personal leave day. CPKC focusses on the following statement made by the Board in the course of its analysis of the basic day (Decision at para. 59):

> The basic day is only a minimum payment and is paid in some limited circumstances. By no means does it represent a method of calculating a regular rate of pay for employees in road service (locomotive engineers, conductors and

> brakepersons), and it does not represent what the employee could have expected to earn under normal circumstances.

[45] CPKC characterizes the statement as the imposition by the Board of a minimum level of pay for personal leave that is not reflected in either the *Code* or the Regulations. At the risk of repetition, I do not agree. CPKC seizes on one statement made in the Board's comprehensive assessment of the basic day, the evidence and the parties' intentions. I acknowledge that the Board returns to the objective of the personal leave provisions a number of times throughout the Decision using different formulations but I find no reviewable error in this regard. The Board was tasked with determining whether it could identify a common intention on the part of CPKC and TCRC to extend the basic day (or other) payment method in the Collective Agreement to personal leave in the absence of a specific provision. The Board reasonably undertook its determination with reference to the text, context and purpose (objective) of section 206.6 of the *Code* and section 17 of the Regulations. The Board carefully explained and justified its analysis, mindful of the relevant statutory constraints and evidence of the parties: *Vavilov* at paras. 90, 105, 108; *Mason* at para. 66.

[46] CPKC submits that the fact the basic day may result in a minimum payment which does not reflect the amount an employee may have been paid had they worked the personal leave day is an irrelevant and extraneous consideration that undermines the reasonableness of the Board's decision: *Canada (Attorney General) v. Best Buy Canada Ltd.*, 2021 FCA 161 at para. 80, citing *Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Association et al.*, 1973 CanLII 191 (SCC), [1975] 1 S.C.R. 382, 41 D.L.R. (3d) 6.

[47] Consistent with my conclusion regarding the Board's statutory analysis, I find that the Board did not rely on extraneous circumstances in assessing the Collective Agreement. The context and purpose of the *Code* and section 17 are not extraneous considerations in an analysis of the Agreement for evidence of the parties' intention to apply a non-specific calculation method to payment for personal leave.

[48] CPKC next argues that the Board's factual findings are at odds with the evidence of the parties. CPKC also argues that the Board unreasonably ignored its factual evidence regarding the use by the parties of the basic day and instead relied solely and without explanation on the evidence presented by Mr. Arthur and TCRC. CPKC repeats its argument that the calculation of pay for running trade employees in the industry is very complicated and the parties agreed on the basic day as the calculation method for various purposes, including leaves of absence.

[49] The Board made a number of critical evidentiary findings regarding the method of payment for conductors, the application of the basic day and Mr. Arthur's actual pay prior to his personal leave day in January 2021 (Decision at para. 56):

- CPKC's estimate that approximately 12 to 18 percent of assignments are paid only the basic day was not supported by any documentary evidence.

- Conversely, TCRC's witnesses were of the opinion that conductors were rarely paid just a basic day. Although those witnesses could not state precisely how many times an employee may be paid a basic day as daily compensation, it was apparent to the Board that the basic day (100 miles) does not reflect the normal wages earned as a brakeperson, conductor or locomotive engineer.

- A basic day is paid in limited circumstances (e.g. when an employee is called to the terminal but the assigned train does not start). The Board was not persuaded that this is a regular or frequent occurrence.

- A basic day is also paid for deadheading, where the employee is compensated based on a basic day when travelling from one terminal to another without performing service.

- Mr. Arthur's pay records indicated that he was paid one basic day for deadheading in the 20 workdays prior to his personal leave day on January 24, 2021.

[50] In arguing that the Board "clearly erred by failing to place appropriate significance" on the basic day payment method, CPKC effectively asks this Court to reweigh the evidence, which is not its role. The evaluation of evidence is the realm of the decision maker at first instance and its findings are owed significant deference provided that the decision is justified in light of the facts: *Vavilov* at paras. 125-126; see also *Byrne v. Canada (Border Services Agency)*, 2025 FCA 30 at para. 5, leave to appeal to SCC refused 41740 (September 18, 2025).

[51] The Board agreed with CPKC that the computation scheme in the Collective Agreement is a "jungle of complexity", and that the basic day had been in the Agreement for a long time and is referred to in several articles, including article 33.05 (Compassionate Leave). The Board then noted that conductors are paid primarily on a per mile basis with pay rates for different classifications and that there are additional pay allowances based on various factors and events. Critically, the Board concluded on the evidence that it was apparent that the basic day does not reflect the normal wages earned by a brakeperson, conductor or locomotive engineer, such as

Mr. Arthur. In fact, the basic day is paid in limited circumstances and the Board was not persuaded that its use was a regular or frequent occurrence. CPKC has identified no error or omission in the Board's factual findings; its argument goes to weight.

[52] I find that it was open to the Board to prefer TCRC's evidence to that of CPKC and that the Board reasonably explained its reasons for so doing. Its conclusion that the basic day represents a minimal entitlement that provides part only of the equation for calculating an employee's wages is reasonable having regard to the legal and factual constraints in this case.

[53] I also find that the Decision is not internally inconsistent. CPKC argues that the Board's finding that subsection 17(b) recognizes the parties' right to agree to a method of compensating employees for personal leave, discussed in paragraph 41 of these Reasons, is at odds with its conclusion that the basic day did not satisfy subsection 17(b) "on the basis" that it would result in a payment less than the amount the employee would have received had they worked the day. Again, the Board did not reject the basic day because, or on the basis that, it would result in a payment that falls short of a certain level; the Board reasonably considered the Collective Agreement as a whole, the basic day article and its usage, and the evidence, focussing on the text and purpose of section 206.6.

B. *Bereavement Leave and other leave provisions of the Collective Agreement*

[54] In the alternative, CPKC submits that the Board erred in failing to find that the method of calculating wages for the purpose of bereavement leave in the Collective Agreement (article 32)

should apply to the calculation of payment for personal leave. CPKC argues that the Board's review of the bereavement leave provision was unduly narrow and unreasonable given the Board's statements that bereavement leave is comparable to personal leave and that "it could be reasonable to find that parties who have agreed on a method of calculating the rate of wages for one type of leave would intend for that method to apply to similar types of leave": Decision at paras. 73-74.

[55] Having rejected CPKC's position that the basic day is a method agreed by the parties for purposes of section 17 of the Regulations, the Board reviewed a number of provisions in the Collective Agreement that contemplate other types of leave. The Board noted that bereavement leave provides for payment to an employee of the amount of their lost earnings exclusive of overtime, meaning that the employee is paid the amount they would have earned had they not been on leave. The Board also noted that the Agreement provides leave for family care (article 33) which is not paid leave but for which CPKC offers a time-limited, repayable loan, and other types of leave, including jury duty and other absences for company business. The Board's review of other leave provisions for personal leave in the Collective Agreement made it clear that the basic day is not a standard method of pay when an employee is entitled to take any particular form of personal leave with pay: Decision at para. 67.

[56] With respect to bereavement leave, the Board found that it is comparable to personal leave but that, given the differing provisions and methods, paid and unpaid, of calculating payment for leave, "[t]here is no consistency on any method of calculating wages for the purpose of leave" in the Collective Agreement: Decision at para. 77. Therefore, the Board was unable to

infer an intention that the bereavement leave payment provision would apply to analogous types of leave for the purpose of section 17. The Board observed that there was no indication in the Agreement that the parties had contemplated this possibility. As a result, the Board was not persuaded that the parties had agreed that the method of calculating wages for bereavement leave would be applied to personal leave taken under section 206.6 of the *Code*.

[57] In my view, the Board did not err in relying on the lack of consistency among various leave provisions in the Collective Agreement in arriving at its conclusion that the Agreement does not contain a provision, specific or otherwise, that can be said to reflect the parties intention that it apply to personal leave taken by employees in reliance on section 206.6 of the *Code*. I find the fact that the provisions establish different methods of calculating payment in the event of different types of leave amply supports the Board's reluctance to draw an inference regarding personal leave from the bereavement leave provision. CPKC refers to article 33.05 of the Agreement (Compassionate Leave) which provides for payment for yard employees at "the equivalent of five basic days for the employee's applicable rate for each week of personal leave" (emphasis added) to support its arguments regarding use of the basic day. However, the term is used in a provision that does not provide payment to an employee who takes compassionate leave; rather, the funds are extended to the employee as a repayable loan (as is the case for leave for family care). The mere use of the term basic day in a provision addressing one form of personal leave that provides for assistance by way of a loan does not assist CPKC to establish its relevance to paid personal leave.

[58] I find that CPKC has not identified any error or flaw in the Board's analysis of the bereavement leave provision, or other leave provisions in the Collective Agreement, that is sufficiently central or significant to render the Decision unreasonable: *Vavilov* at para. 100. The fact that CPKC disagrees with the Board's conclusion does not establish a lack of analysis, clarity or justification in the Board's reasons.

VI. Style of cause

[59] The second respondent in this matter was originally the Head of Compliance and Enforcement of the Labour Program. The Attorney General of Canada (AGC) asks the Court to amend the style of cause to substitute the AGC for the Head as respondent. In light of rule 303(1) of the *Federal Courts Rules*, S.O.R./98-196, this request is well founded: *Grewal v. Canada (Attorney General)*, 2022 FCA 114 at para. 14. Therefore, I would amend the style of cause to reflect the requested change in these reasons and in the forthcoming judgment.

VII. Conclusion

[60] Accordingly, I would dismiss the application for judicial review with costs.

[61] Following the hearing of the application, the parties informed the Court, by letter dated October 28, 2025, that they had reached agreement on costs. CPKC agreed to pay to each of Mr. Arthur and the AGC costs in the amount of $6,000.00 plus disbursements if the application for

judicial review were dismissed, and I would order costs to Mr. Arthur and the AGC as agreed by the parties.

"Elizabeth Walker"
J.A.

"I agree.
Judith Woods J.A."

"I agree.
Anne L. Mactavish J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-133-24
STYLE OF CAUSE:	CANADIAN PACIFIC KANSAS CITY RAILWAY v. DARREN J. ARTHUR and ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 6, 2025
REASONS FOR JUDGMENT BY:	WALKER J.A.
CONCURRED IN BY:	WOODS J.A. MACTAVISH J.A.
DATED:	JANUARY 8, 2026

APPEARANCES:

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