Saskatchewan
Labour Relations Board

DAVID BRIAN LAPCHUK, Applicant v SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, LOCAL 1101, Respondent and GOVERNMENT OF SASKATCHEWAN, Respondent

LRB File No. 263-16; February 17, 2023
Chairperson, Susan C. Amrud, K.C. (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*

For David Lapchuk:	Bob Hrycan
For Saskatchewan Government and General Employees' Union, Local 1101:	Heather Robertson and Samuel Schonhoffer
For Government of Saskatchewan:	Curtis W. Talbot, K.C.

Remedy for breach of duty of fair representation – Reinstatement not available remedy – Arbitration decision final and binding.

Claim for damages not barred by *The Workers' Compensation Act, 2013* – Workers' Compensation Board and Saskatchewan Court of Appeal have already confirmed that jurisdiction respecting duty of fair representation rests with this Board.

No damages payable by Employer – No claim against Employer – No finding of fault against Employer – No basis on which to award damages against Employer.

Applicant has proven that Union caused him loss – Union cannot evade duty to compensate for that loss because amount of damages caused by their wrongdoing cannot be easily or precisely calculated.

Legal expenses granted of $1,250 for each hearing day Applicant was represented by counsel – Legal expenses of other actions taken by Applicant not granted.

Out-of-pocket expenses flowing from Union's breach and satisfactorily proven are to be reimbursed.

Gross-up for income taxes not granted – Board not satisfied damages granted will be taxable.

Interest granted on damages from date of termination of employment to date of decision, based on principles of *The Pre-judgment Interest Act*.

Moral damages granted in the amount of $25,000, the top of the range established by Court of Appeal for the employment context.

Additional compensation for delay not granted – Setting aside delays not attributable to either party, Applicant and Union share responsibility for length of hearing.

Punitive damages not granted – Board not satisfied punitive damages are required to properly compensate Applicant for his losses.

Compensation for breach of duty of fair representation calculated on basis of retirement allowance approach – 1.5 months per year of service – 17 percent top-up to reflect loss of collective agreement benefits – Not subject to reduction for mitigation.

REASONS FOR DECISION

Background:

[1] **Susan C. Amrud, K.C., Chairperson:** On February 23, 2022, the Board issued Reasons for Decision[1] in this matter ["Liability Decision"] that found that Saskatchewan Government and General Employees' Union ["Union"] had breached the duty of fair representation that it owed to David Lapchuk. The Board determined that it did not have sufficient evidence at that time to make a decision as to an appropriate remedy. Accordingly, the Board reconvened on August 23 and 24, September 12, 29 and 30 and October 7 and 21, 2022 ["Remedy Hearing"] to hear further evidence and argument on that issue. These Reasons address remedy.

[2] Lapchuk was dismissed from his employment with the Government of Saskatchewan ["Employer"] on October 28, 2013. The Union filed a grievance respecting the termination, that was dismissed by an Arbitrator on August 31, 2016.

[3] In the Liability Decision, the Board examined the Union's course of conduct in its entirety and found numerous deficiencies, leading to a finding that it had acted in a manner that was arbitrary, discriminatory and in bad faith. Some of the conduct that led to that conclusion was as follows:

a) At, and in preparation for, a meeting with the Employer on September 30, 2013, the Union did nothing to assist Lapchuk.

b) Following that meeting, the Union did not investigate the cause for the breakdown of the meeting or take into account Lapchuk's concerns or Lapchuk's illness.

c) It did not make a rational, reasoned decision respecting whether to have his grievances heard by a single Arbitrator or an arbitration panel, after the grievance committee recommended that the grievances be heard by a panel.

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[1] *David B. Lapchuk v Saskatchewan Government and General Employees' Union*, 2022 CanLII 21656 (SK LRB).

d) While the Union indicated that they were primarily putting forth a medical defence, they showed up at the arbitration hearing with no medical evidence. As a result, the Arbitrator granted them an adjournment to gather that evidence. The Arbitrator made it clear that the Union knew, before the hearing reconvened, what was required of them, but they chose not to provide appropriate evidence. They chose to proceed on the adjourned date, knowing their case would fail. When the Employer would not consent to medical reports being submitted without a witness to speak to them, the Union representatives did not know what to do, and did not take any steps to find out what to do, causing the reports to be disregarded by the Arbitrator. They argued that it was Lapchuk's responsibility to gather evidence, not theirs. Further, they tried to argue that they did not have Lapchuk's consent to gather medical evidence, but that was clearly and obviously false.

e) The Union ignored the admonition in the collective agreement that time is of the essence in the hearing of an arbitration of a termination grievance, and allowed excessive delays. For example, the collective agreement states that termination arbitrations will be heard, and decisions rendered, within 120 days unless otherwise agreed to by the parties. In fact, Lapchuk was terminated on October 28, 2013, and the Arbitrator's decision was issued on August 31, 2016, more than 1000 days after his termination.

f) The evidence respecting the other defence that the Union intended to raise at the arbitration was disregarded by the Arbitrator because the Union representatives did not know how to tender it in an admissible manner.

g) The Union was unable to explain the rationale for many decisions made in the course of preparing for and conducting the arbitration or even, in some cases, who had made important decisions.

[4] These were not, as the Union described them during the Remedy Hearing, "technical breaches" of their duty of fair representation. They were fundamental contraventions of the duty of fair representation that the Union owed to Lapchuk.

[5] The Board was provided with a decision of the Workers' Compensation Board of Saskatchewan ["WCB"], acting in its role as the Board Appeal Tribunal, dated April 2, 2018[2] ["WCB 2018 Decision"]. It includes a number of comments that are relevant in this matter:

> *A further complicating factor is the fact that Mr. Lapchuk suffered from PTSD before the injury.* [meaning before October 17, 2012] *Although he had been symptom free for about 2 years before October 17, 2012, he retained a pre-existing vulnerability that was prone to be triggered.* (page 2)
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> *Although Mr. Lapchuk had suffered a number of stressful events throughout his life, it was 2 MVAs* [motor vehicle accidents] *in 2002 which had resulted in PTSD issues for him. This was confirmed by the MDA* [Multidisciplinary Assessment]*.* (page 8)
>
> *Mr. Lapchuk was and remained a diagnosed PTSD sufferer. He had first been diagnosed with the condition at some point between 2002 and 2005. However, events leading up to that diagnosis were suspected to stretch back to his childhood.* (page 16)

[6] Finally, in making a determination that Lapchuk was disabled from work as a result of his ongoing PTSD, and was therefore entitled to benefits, the WCB made the following comments:

> *A complication appears to present itself by the fact that Mr. Lapchuk's PTSD symptoms gravitate around the four broad factors of:*
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> 1. *A pre-existing vulnerability caused by historic events.*
> 2. *The injuring incident of October 17, 2012.*
> 3. *The disciplinary process which includes all actions (whether wrongful or not) taken by the employer, and*
> 4. *Appeal process, which includes Mr. Lapchuk's interactions with the WCB, Courts and other agencies.*
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> *The theoretically correct approach would be to accept only that portion of Mr. Lapchuk's psychological injury which was caused by the assault and that which has been aggravated or accelerated by it.*
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> *However, an analysis of the MHA* [mental health assessment] *and the valuable input supplied by Mr. Petroski makes it clear that this is factually impossible. Although the stress brought to bear on Mr. Lapchuk by the appeal process and his attempts to regain his job is not compensable, that stress is inseparable and indistinguishable from stress caused by the assault, or the employer's actions following it.*
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> *Mr. Lapchuk's PTSD is therefore a complex conglomerate of compensable and non-compensable events that can only be theoretically segmented.*
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> *As long as the WCB has to take responsibility for part of his wage loss and medical treatment, it has to accept responsibility for all of it; that is, until it can be said with reasonable certainty that the PTSD caused by the assault (and the PTSD aggravated by it) is no longer a disabling factor within the meaning of Section 31 of the Act.* (page 17)

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[2] Exhibit U106.

Evidence:

[7] During the Remedy Hearing, three witnesses provided evidence on behalf of Lapchuk: Lapchuk himself, Gregory Petroski (retired psychologist) and Jamie Jocsak (actuary).

[8] Lapchuk testified that, since he was dismissed from his employment with the Employer on October 28, 2013, he has not been employed. He has been in receipt of WCB benefits, effective from before the date of his termination and continuing as of the date of the Remedy Hearing. On two occasions his benefits were discontinued, but after successful appeals he received lump sum payments in 2018 and 2021 reimbursing him in full.

[9] The Union challenged Petroski being qualified as an expert witness because, they argued, first, he was not properly qualified and second, he was not impartial, but had assumed the role of advocate for Lapchuk.

[10] In *White Burgess Langille Inman v Abbott and Haliburton Co*[3], the Supreme Court of Canada described the analysis to be undertaken when considering the admissibility of expert evidence as follows:

> *[23] At the first step, the proponent of the evidence must establish the threshold requirements of admissibility. These are the four Mohan factors (relevance, necessity, absence of an exclusionary rule and a properly qualified expert) and in addition, in the case of an opinion based on novel or contested science or science used for a novel purpose, the reliability of the underlying science for that purpose: J.-L.J., at paras. 33, 35-36 and 47; Trochym, at para. 27; Lederman, Bryant and Fuerst, at pp. 788-89 and 800-801. Relevance at this threshold stage refers to logical relevance: Abbey (ONCA), at para. 82; J.-L.J., at para. 47. Evidence that does not meet these threshold requirements should be excluded. Note that I would retain necessity as a threshold requirement: D.D., at para. 57; see D. M. Paciocco and L. Stuesser, The Law of Evidence (7th ed. 2015), at pp. 209-10; R. v. Boswell, 2011 ONCA 283, 85 C.R. (6th) 290, at para. 13; R. v. C. (M.), 2014 ONCA 611, 13 C.R. (7th) 396, at para. 72.*
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> *[24] At the second discretionary gatekeeping step, the judge balances the potential risks and benefits of admitting the evidence in order to decide whether the potential benefits justify the risks. The required balancing exercise has been described in various ways. In Mohan, Sopinka J. spoke of the "reliability versus effect factor" (p. 21), while in J.-L.J., Binnie J. spoke about "relevance, reliability and necessity" being "measured against the counterweights of consumption of time, prejudice and confusion": para. 47. Doherty J.A. summed it up well in Abbey, stating that the "trial judge must decide whether expert evidence that meets the preconditions to admissibility is sufficiently beneficial to the trial process to warrant its admission despite the potential harm to the trial process that may flow from the admission of the expert evidence": para. 76.*

[3] 2015 SCC 23 (CanLII), [2015] 2 SCR 182.

[11] At the first step, Lapchuk was required to establish the threshold requirements of admissibility. With respect to the four *Mohan* factors - relevance, necessity, absence of an exclusionary rule and a properly qualified expert - the Union challenged Petroski only on the basis that he was not a properly qualified expert. The Union acknowledged that it called Petroski as an expert witness at the arbitration hearing, but argued that he was no longer qualified because he is no longer actively practicing or licensed to practice as a psychologist, because he has retired. The Board does not accept this argument. Petroski was a psychologist for over 40 years. Based on his evidence and the Statement Re: Expertise for Greg Petroski[4], it was clear that during his career he had significant experience and expertise in treating people suffering from PTSD. He was a Registered Psychologist until December 31, 2021. At that point, his registration lapsed, but his expertise did not.

[12] The second part of determining whether Petroski was a properly qualified expert required an analysis of his willingness and capacity to provide the Board with fair, objective and non-partisan opinion evidence. In support of its argument that Petroski was not objective, the Union said that Petroski prepared his report on the basis of an interview with Lapchuk and an email sent to him by Lapchuk on August 15, 2022. In fact, Petroski made it clear in his evidence that, in forming his opinion, he reviewed and relied on the reports of Dr. Karen Litke and Dr. WJ Arnold[5] and the Liability Decision. When asked why he thought he should testify, Petroski stated that he had a lifetime of working in the field, knew Lapchuk and considered he had an obligation to provide evidence for the benefit of the process. The Board was satisfied that Petroski understood his duty to the Board and was able and willing to carry it out. There was no realistic concern that he would be unable or unwilling to comply with his duty to provide fair, objective and non-partisan evidence. There was no evidence before the Board that he had assumed the role of an advocate for Lapchuk. The four threshold requirements for admission of Petroski's evidence were met.

[13] With respect to the second step, the Board determined that the potential benefits of admitting Petroski's evidence justified its admission. The Board decided that Petroski would be accepted as an expert witness.[6]

[14] Petroski's expert opinion is that the Union's actions, that were identified in the Liability Decision as breaching the duty of fair representation, exacerbated many of the symptoms of

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[4] Exhibit A62.
[5] See para 28 for more information respecting their reports.
[6] For a discussion of the applicability of this jurisprudence to the Board, see Liability Decision, para 91.

Lapchuk's PTSD. Petroski's report[7] stated that the Union's actions "directly contributed to his preoccupation and obsession with the progress of his case" (page 3). Petroski also found: "The delay in resolving this matter has aggravated and reinforced his preoccupation with these events and delayed/prevented him from healing" (page 4).

[15] Petroski's report commented that Lapchuk's PTSD symptoms (listed in the report), were exacerbated by the Union's conduct. Petroski's opinion is that the Union's approach to the arbitration "actively contributed to his increasing sense of frustration and feelings of abandonment by those required to represent him" (page 2/3):

> *One of the key debilitating features of PTSD is the experience of loss of control, that the individual does not have the capacity to defend or protect themselves from the danger that they are experiencing. In this instance that feeling of loss of control was compounded by the fact that his "defence team" did not seem to care about his case and did not properly represent him.* (page 3)

[16] The Board accepts Petroski's evidence as providing important information for the determination of an appropriate remedy in this matter.

[17] Jamie Jocsak is a Fellow of the Society of Actuaries and Fellow of the Canadian Institute of Actuaries. He prepared a report[8] and an updated report[9] for the Board's consideration, and gave evidence. He was accepted by the Board as an expert witness, without objection. He prepared his reports on the basis that Lapchuk is permanently disabled with PTSD and will not be able to return to work. He notes that Lapchuk is currently receiving WCB income benefits of $1,589.13 biweekly.

[18] Assuming a retirement age of 65, Jocsak calculated Lapchuk's pecuniary losses from termination to retirement (Table 1) as follows:

After-tax past loss of income and benefits with interest	*$486,657*
Plus: after-tax future loss of income and benefits	*$270,051*
Plus: income tax gross-up	*$619,125*
Lump sum gross payment for loss of income and benefits	*$1,375,833*
Plus: out-of-pocket expenses with interest	*$257,673*
Total lump sum payment for losses	***$1,633,506***

[7] Exhibit A64.
[8] Exhibit A59.
[9] Exhibit A61.

[19] If this amount is adjusted to account for the WCB payments Lapchuk has been receiving and presumably will continue to receive until age 65, Lapchuk's pecuniary losses from termination to retirement (Table 2) would amount to:

After-tax past loss of income and benefits with interest	*$106,597*
Plus: after-tax future loss of income and benefits	*$85,864*
Plus: income tax gross-up	*$117,960*
Lump sum gross payment for loss of income and benefits	*$310,421*
Plus: out-of-pocket expenses with interest	*$257,673*
Total lump sum payment for losses	***$568,094***

[20] Jocsak did similar calculations ending at age 60.4 (August 23, 2022, being the day the Remedy Hearing commenced) and at age 70. The corresponding lump sum payments were $1,142,504 and $2,131,568 (no WCB deduction) and $409,954 and $1,105,664 (with WCB deduction).

[21] These amounts were calculated on the basis that Lapchuk would have remained a Level 7 employee until retirement. While there was evidence before the Board respecting steps that had been taken to consider a reclassification for Lapchuk to a Level 10, no decision had been made in this regard prior to his termination. Accordingly, it cannot be assumed that the reclassification would have occurred.

[22] Jocsak added in a 45 percent tax gross-up because, in his words "lump sum damages for loss of income and benefits following a wrongful dismissal are generally considered taxable income by CRA". He noted in his oral evidence that his understanding was that if they were categorized as damages for personal injury, they would not be taxable.

[23] Jocsak added to the lost employment income the actual amount of the lost Employer pension contributions as set out in the collective agreement between the Union and the Employer: 7.5 percent of salary to October 2015, then 7.6 percent to December 2019, then 8.6 percent from January 2020 (less a 25.5 percent tax deduction). With respect to non-pension benefits such as group life insurance, health benefits and dental benefits, Jocsak estimated this lost amount as 7.5 percent of after-tax future loss of income, based on standard rates of 5 to 10 percent. In cross-examination he acknowledged that this was an estimate, and that based on the collective agreement, a number closer to 5 percent may be more accurate. Lapchuk's past out-of-pocket costs for health expenses are included in the claimed out-of-pocket expenses based on the actual

costs incurred, with an assumption that they would have been covered by his health plan if he had continued to be employed. With respect to future loss of employment income and benefits, Jocsak applied an Actuarial Multiplier based on his interpretation of the requirements in *The Queen's Bench Rules of Court*.

[24] The Union called four witnesses: the two labour relations officers who conducted the arbitration of Lapchuk's grievances, Kelly Hardy and Marie Amor; another labour relations officer, Cory Hendriks; and Dr. Norman Brodie.

[25] It is not clear what the Union's purpose was in calling Hardy and Amor. In their evidence, they simply continued to deny that they did anything wrong, or that they were responsible for the outcome of the arbitration. Hendriks' evidence related to the collective agreements that would have applied to Lapchuk if he had not been terminated. Credibility was again an issue with these witnesses. The Board did not find their evidence to be helpful in making this decision.

[26] Dr. Brodie is a registered psychologist. Neither Lapchuk nor the Employer objected to him testifying as an expert witness. Based on the Expert Tender[10] and Curriculum Vitae[11] filed for him by the Union, the Board accepted Dr. Brodie as an expert in psychology and clinical psychology, including the diagnosis and assessment of PTSD, other psychological disorders, and emotional and personality functioning.

[27] Dr. Brodie prepared a report for this matter dated September 20, 2022[12] based on his review of psychological reports from Petroski, Dr. Arnold and Dr. Litke. Dr. Brodie has never met or examined Lapchuk.

[28] The Union filed a Mental Health Assessment prepared for the WCB by Dr. Litke, Registered Doctoral Psychologist, dated March 21, 2022[13]. It indicates that it was based on clinical interviews of Lapchuk and his wife, psychological testing and assessment, collateral information in the form of medical reports and WCB file information. The Union also filed a Recovery and Return to Work Plan prepared for the WCB by Dr. Arnold, PhD RDPsych, on May 16, 2022[14]. It indicates that he has knowledge of Lapchuk's file through file review, has no personal knowledge of Lapchuk, and reviewed the file in the role of psychology consultant in the context of *The*

[10] Exhibit U134.
[11] Exhibit U133.
[12] Exhibit U136.
[13] Exhibit U138.
[14] Exhibit U137.

Workers' Compensation Act, 2013. Lapchuk objected to these reports being accepted into evidence by the Board without the Union producing their authors for cross-examination. In the end, the Board determined that the reports would be admitted, not to prove the truth of the facts stated in them, but rather as indicating the basis on which Dr. Brodie's opinion was formed. In making this determination, the Board relied, in particular, on *R v Abbey*[15] and *R v Lavallee*[16] and the following distillation of those decisions and their application in a situation similar to this matter, in *R v Plaxton*:

> *[77] Justice Wilson[17] noted that the contents of the statements in the expert report were hearsay. Following the line of authority from Abbey, Justice Wilson formulated the following propositions regarding the use of hearsay in expert evidence at 893:*
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> > *1. An expert opinion is admissible if relevant, even if it is based on second-hand evidence.*
> >
> > *2. This second-hand evidence (hearsay) is admissible to show the information on which the expert opinion is based, not as evidence going to the existence of the facts on which the opinion is based.*
> >
> > *3. Where the psychiatric evidence is comprised of hearsay evidence, the problem is the weight to be attributed to the opinion.*
> >
> > *4. Before any weight can be given to an expert's opinion, the facts upon which the opinion is based must be found to exist.*
>
> *. . .*
> *[79] This jurisprudence establishes that an expert may offer an opinion notwithstanding that it is based, in whole or in part, on a secondary source or a hearsay source. The secondary or hearsay source is admitted to demonstrate the basis on which the opinion was formed: not to prove the truth of the facts stated. The effect of Lavallee is that expert evidence that is based on hearsay is not, on its own, inadmissible. Lavallee and Abbey are clear that issues concerning hearsay and the failure to prove the facts upon which an expert relies may go to the weight of the evidence, not to its admissibility These cases make clear that Dr. Tano's report can be admitted.[18]*

[29] Dr. Brodie's report turned out to be unreliable in its interpretation of the reports of Dr. Litke and Dr. Arnold. On several key points, he admitted in cross-examination that statements in his report were incorrect.

[30] In her report, Dr. Litke referred to a January 2017 mental health assessment prepared by Registered Doctoral Psychologist, Dr. M. Vandergoot. Dr. Brodie stated in his report that Dr. Vandergoot said the following:

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[15] 1982 CanLII 25 (SCC), [1982] 2 SCR 24.
[16] 1990 CanLII 95 (SCC), [1990] 1 SCR 852.
[17] *R v Lavallee*, *Ibid*.
[18] *R v Paxton*, 2013 ABQB 593 (CanLII).

> *It was also noted by the psychologist in 2017 that psychometric testing had not yielded "compelling evidence of mental and physical health issues," but there were some results that suggested "over-reporting or exaggeration".* (page 2)

[31] In fact, what Dr. Litke indicated in her report as being found by Dr. Vandergoot was the following:

> *With respect to psychometric testing, she noted that had there not been "compelling evidence of mental and physical health issues" she might have interpreted some results as evidence of over-reporting or exaggeration. Rather, she noted the results of psychometric testing to be very consistent with his presentation and other available data.* (page 7)

Dr. Brodie was required to admit in cross-examination that he made a material misquote of Dr. Vandergoot's findings and that his report of what she said was exactly contrary to what she actually said.

[32] Dr. Brodie also made the following statement:

> ***5. As Mr. Lapchuk has been involved in multiple legal challenges and litigation, what impact, if any, would that have with respect to PTSD?***
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> *Response: I would concur with the expressed professional opinions of Drs. Arnold and Litke that Mr. Lapchuk's involvement in multiple and ongoing legal disputes and challenges would act to focus his mind on his symptoms and problems and serve to increase the tendency to magnify or over-focus on these, resulting in reports of increased symptom severity as long as there is any external incentive to emphasize these as proof of his injuries, and thereby be reinforced by the potential of receipt of secondary gains such as compensation. It would be reasonable to conclude that pursuit of multiple such actions over time would act to intensify such negative response biases and over-focus on disability status.* (page 6)

On cross-examination Dr. Brodie admitted that this was a material misquote of their findings. He misread Dr. Litke's report and his reference to it in this comment is inaccurate, and a misinterpretation. It was exactly contrary to what she actually said.

[33] Dr. Brodie's report repeatedly referred to what he called Lapchuk's over-reporting and exaggeration. On cross-examination Dr. Brodie admitted that, although he implies intent, this can be subconscious, based on feelings of being overwhelmed and unable to cope. He did not say that in his report, but admitted that was a reasonable caveat that he should have included. He agreed that Dr. Litke rejected intentional over-reporting or exaggeration; however, in describing her findings in his report Dr. Brodie did not mention this. While neither Dr. Litke nor Dr. Arnold found a motivation of secondary gain, Dr. Brodie provided an opinion that their reports reflected "indicated tendencies to over-report or embellish his symptomatic complaints, including PTSD

symptoms, for secondary gains" (page 5/6). In cross-examination he agreed that their reports did not say that. When asked about his opinion that Lapchuk was embellishing his symptomatic complaints, Dr. Brodie stated that this means to add on and that there is not necessarily an ulterior motive, just that the results are enhanced or exaggerated. He suggested that embellishment is a neutral word respecting motivation. He agreed that neither Dr. Litke nor Dr. Arnold used the word embellish and that Dr. Litke and Dr. Arnold did not find over-reporting for secondary gain.

[34] With respect to the Union's responsibility for aggravating Lapchuk's PTSD, he stated:

> *While it is conceivable that the inadequate representation may well have partially contributed to his overall stress level and adverse reactions, based on the reviewed documents it would not be possible to offer any specific estimation of the degree of contribution or responsibility from a psychological perspective.* (page 5)

[35] In his oral evidence he agreed that lack of success at the arbitration would have added to Lapchuk's distress. He agreed that Lapchuk's PTSD symptoms were aggravated or intensified by the Union's conduct. Because of his fragile mental state, the Union's conduct had a greater impact on Lapchuk than it may have had on other people.

Argument on behalf of Lapchuk:

[36] Lapchuk acknowledges that the Employer is correct when it argues that reinstatement of Lapchuk's employment is not a remedy available in this proceeding. Instead, only damages commensurate with reinstatement can be ordered. This is because the Arbitrator found in favour of the Employer after a hearing on the merits.

[37] The effect of section 6-45 of *The Saskatchewan Employment Act* ["Act"] is that Lapchuk has rights under sections 6-58 and 6-59 but very narrow remedies. This draconian effect must be counterbalanced by the jurisdiction to award monetary damages. Since the only remedy available for Lapchuk now is damages, he urges the Board to interpret its remedial powers under section 6-104 of the Act by giving them the fair, large and liberal interpretation that best ensures the attainment of their objects.

[38] The goal of the Board, in crafting a remedy, is to put Lapchuk into the position he would have been in but for the Union's breach of the duty of fair representation that they owed to him. The Board must do this even though the Liability Decision suggests we can never know what that would have been.

[39] The WCB 2018 Decision stated that it is impossible to separate compensable from non-compensable events. Likewise, neither the Union nor the Arbitrator nor the Board can do that.

[40] PTSD is a medical condition that affects behaviour. The Union could have provided a diagnosis of PTSD to the Employer before or during the arbitration or before the termination. The Union was indifferent to Lapchuk's PTSD. In the Final Argument and Brief of Law that it filed with the Arbitrator the Union listed 10 mitigating factors; PTSD was not one of them. They did not take it seriously and were not prepared to put in the groundwork to put it forward. The arbitration proceeded without critical evidence. It was an assessment of Lapchuk's behaviour without the diagnosis that explained the behaviour as a product of trauma. The Arbitrator was not given a medical explanation for his behaviour, which meant that the only explanation for his behaviour was that it was free and voluntary and punishable. His attempts to regain his employment were therefore not being seen through a proper lens. He was not being heard; his condition was not being addressed.

[41] Amor said Lapchuk's refusal to accept responsibility for the October 17, 2012 event ["Fort Qu'Appelle incident"][19] diminished the chance that the Arbitrator would order reinstatement. But she did say that events outside an employee's control are non-culpable. In cross-examination she agreed that behaviour that is the result of an underlying medical condition can be viewed as non-culpable, but that medical evidence would be required to show that. The Union had that evidence, but neglected to provide it to the Arbitrator, leading to the refusal to reinstate. The Union cannot predict the value of evidence that they took no steps to obtain. The Arbitrator was not provided with a diagnosis of PTSD, even though the Union had that evidence, and the Arbitrator advised them in advance of the hearing that it was required. She based her decision on this lack of evidence and Lapchuk's unexplained behaviour during the arbitration hearing.

[42] In arguing that reinstatement was never on the table because of Lapchuk's post-termination behaviour, the Union is once again failing to recognize the difference between medically compromised behaviour and behaviour that was properly subject to censure by the Arbitrator and the Employer. Lapchuk argues that an adjudication on the merits did not really occur, but was eviscerated by the Union.

[43] Lapchuk is pursuing a monetary award. His submissions are supported by the Union's conduct throughout, as described in the following paragraphs, starting with their attitude to his

[19] See Liability Decision paras 16 and 17.

medical condition, which included releasing his medical information without his consent, for their amusement.[20]

[44] The Union's arbitrary, discriminatory and bad faith conduct commenced before Lapchuk's termination, in and arising out of a meeting on accommodations. When Lapchuk turned to Rod McCorriston, Union Director of Labour Relations, for assistance following that meeting, McCorriston did not recognize or acknowledge Lapchuk's mental health issues, and provided no assistance to him.

[45] Lapchuk's termination letter indicated that Lapchuk was familiar with the expectations of him in the Fort Qu'Appelle incident, but that he did not comply with policy or use verbal techniques to de-escalate and manage the conflict situation. However, the evidence in this matter indicated that he received only theory training with no practical experience or training in scenarios.

[46] Lapchuk was terminated for use of force. The Union had a video of the event, which Lapchuk believes proves his version of the Fort Qu'Appelle incident. The Union did not show the video at the arbitration or enter into evidence the Analysis of Digital Images Report[21] respecting the video that they had in their possession, or call as a witness its author, Michael Plaxton.

[47] The Union declined full panel arbitration and did not follow a thoughtful process in making that decision.

[48] According to the Arbitrator, the Union was unprepared for the arbitration, leading to a need for an adjournment, following which they still were not prepared.

[49] The Union knew that they needed to tender medical evidence, especially respecting Lapchuk's PTSD. The Union had warnings about the sufficiency of the evidence they intended to call. The hearing was adjourned to give the Union more time to gather medical evidence since, in the Arbitrator's words, medical evidence was "critical". The Employer offered to share the cost of an independent psychiatrist. Two conference calls were held between the Union, Employer and Arbitrator to discuss the issue. Even with all of this direction and assistance, the Union still did not obtain the required evidence.

[50] The Union had evidence that Lapchuk suffered from chronic PTSD.

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[20] Exhibit A3.
[21] Exhibit A26.

[51] Hardy recommended that Dr. Clarke be called as a witness. Even though it was the Union's responsibility to make arrangements for her to testify, they never made them.

[52] In response to persistent attempts by Lapchuk to bring evidence to the Union's attention, they chose to proceed with the arbitration hearing. They were not listening to him and were acting in defiance of his wishes.

[53] Despite sworn evidence by Hardy, Amor and McCorriston that they were unaware of Dr. Natarajan's report before January 16, 2016 (after the end of the arbitration), the Board found that in the end all of them had to admit that was not true. The Board should consider whether this was an attempt to mislead it.

[54] The Union took no responsibility for not filing Dr. Natarajan's report at the arbitration.

[55] The Union said Dr. Natarajan's report could not provide relevant evidence because he did not provide a diagnosis of Lapchuk's PTSD prior to October 2012. This is tantamount to saying Lapchuk is at fault for his problematic behaviour because they did not have a diagnosis to explain it before the Arbitrator.

[56] The Union decided to proceed with the final day of the arbitration hearing on November 12, 2015 because Lapchuk was not fully co-operative. They gambled with his career when they knew what the consequences would be.

[57] The Union was unable to explain the rationale for their decisions or even who made some decisions. The Union is required to put its mind to the merits of the grievances and engage in a process of rational, reasoned decision-making. They acted in complete disregard or indifference to the consequences of their actions for Lapchuk.

[58] The Union's approach to medical evidence was particularly arbitrary. They chose not to provide appropriate evidence. They did not just act negligently or exercise poor judgment. The Board found: "They acted in blatant and reckless disregard for the consequences to Lapchuk. It is incomprehensible and inexcusable that they would choose to proceed with the November hearing dates knowing their case would fail."

[59] The Board may decide that a course of conduct is so implausible, so summary or so reckless as to be unworthy of protection. Hardy admitted she knew that if they proceeded without further medical evidence they would likely be unsuccessful.

[60] We can never know how the Union's conduct affected the outcome of the arbitration.

[61] The Union was guilty of gross negligence in its representation of Lapchuk.

[62] The Union suggested that they relied on a document dated April 24, 2015[22] that purportedly revoked Lapchuk's consent for them to obtain medical evidence, when Hardy admitted that she first saw it in February 2019.

[63] The Union's witnesses were found by the Board to not be credible.

[64] Three of the four witnesses they tendered in the Remedy Hearing declined to be truthful. Hardy took positions contrary to the Board's findings. Amor made a transparent attempt to salvage the introduction of a document, and ended up making things up on the stand.

[65] Dr. Brodie did not interpret Dr. Litke's report honestly and fairly. His description of what she said was the exact opposite of what she said. He left out key words, thereby distorting the findings. Dr. Litke and Dr. Arnold made no findings about external incentives; Dr. Brodie made that up. He was forced to admit in cross-examination that they never said that. He attempted to mislead the Board. In his report he stated that Dr. Arnold's and Dr. Litke's opinions were that Lapchuk's involvement in multiple and ongoing legal disputes and challenges served to increase his tendency to magnify or over-focus on his symptoms and problems, resulting in reports of increased symptom severity as long as there was any external incentive to emphasize these as proof of his injuries, and thereby be reinforced by the potential receipt of secondary gains such as compensation. In cross-examination he admitted that Dr. Litke made no finding about multiple ongoing legal disputes focusing Lapchuk's mind on his symptoms. He admitted Dr. Arnold nowhere made that finding. He made up those observations. Under cross-examination he admitted that Dr. Litke never said the tendency to magnify or overfocus would result in increased symptom severity. He admitted Dr. Arnold never said that either. This was another transparent bid on his part to mislead the Board.

[66] In his response to Question 1 in his report, he refers to formal psychological testing results obtained by Dr. Litke of probable over-reporting or exaggerations of ratings of disabilities that were likely fostered by the ongoing adversarial processes Lapchuk was involved in. In cross-

[22] Referred to as the Authorization/Revocation document in the Liability Decision.

examination he admitted Dr. Litke never found over-reporting fostered by the ongoing adversarial processes.

[67] Dr. Brodie said it would be reasonable to conclude a lack of full effort and adequate representation by the Union during the arbitration may have increased the sense of pressure on Lapchuk to prove his case and that it has contributed to the indicated tendencies to over-report or embellish his symptomatic complaints including PTSD for secondary gain. When reminded in cross-examination that Dr. Litke and Dr. Arnold did not use the word embellish, he stepped back and said embellish was a neutral word, even though in direct evidence he offered it as a synonym for malingering. Dr. Litke and Dr. Arnold did not describe over-reporting for secondary gain. In cross-examination Dr. Brodie was forced to admit they did not mention that.

[68] In summary, he falsely imputed findings to Dr. Litke and Dr. Arnold. He misled the Board. He was an advocate for the Union. The Board should dissociate itself from his evidence.

[69] The final issue is delay. Dr. Brodie did not address the effect of delay. More than ten years have passed since Lapchuk was assaulted. The Board mentioned delay. The Union did not explain the delay and provided no evidence of a reasonable, rational decision being made to delay the arbitration hearing.

[70] The longer the Union delayed the matter, the less opportunity Lapchuk had to mitigate his damages. The delay aggravated his PTSD symptoms and prevented him from recovering. He tried to mitigate: he protested the delays. He was required to pursue claims to WCB and to the Union under its long term disability plan that he would not have had to if the Union had expeditiously dealt with his grievances. His mental distress became more acute. Petroski said the delay aggravated his condition.

[71] Lapchuk argues that the Board should find that the Union caused delay in the hearing of this matter that amounted to an abuse of process. The first day of the hearing of this matter occurred on June 26, 2018 and the final day of the hearing occurred on October 21, 2022. Most of this more than four year delay in hearing this matter, he says, is attributable to the Union. Brief adjournments were requested by Lapchuk when required to reset himself.

[72] Lapchuk referred the Board to *Law Society of Saskatchewan v Abrametz*[23] ["*Abrametz*"], a case in which a lawyer was being disciplined by the Law Society. In that matter, there was a delay of 6 years, but the Court found there was no prejudice because he could continue to practice law during this time period. The Court stated that delay may constitute an abuse of process in two ways: hearing fairness may be compromised or significant prejudice may result due to inordinate delay. As in *Abrametz*, Lapchuk is arguing that the latter occurred in this matter. In *Abrametz*, the Court relied on determinations it made in *Blencoe v British Columbia (Human Rights Commission)*[24]:

> *[43] Blencoe sets out a three-step test to determine whether delay that does not affect hearing fairness nonetheless amounts to an abuse of process. First, the delay must be inordinate. Second, the delay must have directly caused significant prejudice. When these two requirements are met, courts or tribunals will proceed to a final assessment of whether the delay amounts to an abuse of process. Delay will amount to an abuse of process if it is manifestly unfair to a party or in some other way brings the administration of justice into disrepute: Behn, at paras. 40-41.*

[73] First, the Board must determine whether the lengthy process here amounts to inordinate delay. This is to be done by considering contextual factors including the nature and purpose of the proceedings, the length and causes of the delay and the complexity of the facts and issues in the case. Lapchuk argues that he has proven inordinate delay. The facts and issues in this case were not complex; they were described by the Board in 21 paragraphs (paras 150-170).

[74] Next, *Abrametz* provides, the Board must determine whether the delay directly caused significant prejudice to Lapchuk:

> *[69] Prejudice is a question of fact. Examples include significant psychological harm, stigma attached to the individual's reputation, disruption to family life, loss of work or business opportunities, as well as extended and intrusive media attention, especially given technological developments, the speed at which information can travel today and how easy it is to access.*

Lapchuk argues the delay caused him significant prejudice; he suffered all of these harms other than intrusive media attention.

[75] Finally, if the Board finds that the delay was inordinate and caused significant prejudice, the Board is to conduct a final assessment of whether the delay amounts to an abuse of process.

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[23] 2022 SCC 29 (CanLII).
[24] 2000 SCC 44 (CanLII), [2000] 2 SCR 307.

This will occur when the delay is manifestly unfair to a party or in some other way brings the administration of justice into disrepute.

[76] Lapchuk argues that the Union's conduct caused the delay. Not all delay affects litigants equally. It harmed him more than it would have harmed a non-disabled litigant. The Union's conduct was manifestly unfair and brings the administration of justice into disrepute. The delay here was an abuse of process. He is disabled and compromised. He suffered from the delay. The Union obstructed this matter and ensured the process was unfair.

[77] *Abrametz* noted that remedies for abuse of process fall on a broad spectrum:

> *When an abuse of process is found, several remedies are available. Courts and tribunals must be mindful as to appropriate remedies in the various contexts in which abuse of process can occur. Remedies for abuse of process can serve several purposes: they can compensate the applicant for the prejudice caused by the delay, serve as an incentive for the decision maker to address any problems of systemic delay, or express the court or the tribunal's concern relating to delay in the administrative system. As the doctrine of abuse of process is broad, it can usefully be appreciated on a spectrum. Various remedies are available, up to and including a permanent stay of proceedings.*[25]

[78] Lapchuk needs an affirmative remedy. A decision whether to grant a remedy for delay involves a balancing of public interests. The public has an interest in ensuring that a tribunal follows fair procedures. The public has an interest in a resolution of administrative cases on their merits. The Union defeated both of these interests. The arbitration was also unfair due to delay. The Union ensured the process was unfair through their derelict representation. The Union deprived the public of a true adjudication. The Union defeated Lapchuk's interests all the way down the line. They took a difficult employment situation and made it many times worse. His circumstances changed due to the delay. The Union says he is fundamentally at fault. The Union blamed him for the lack of evidence. When faced with that degree of willingness to blame and to offload responsibility, the Board has to do something significant. After 9 years of litigation all we know is that there was never a true adjudication because the Union made sure of that.

[79] Lapchuk claims legal expenses of $219,927.88. Some of those legal expenses apply to representation in this matter. Following Lapchuk's termination, he launched several other actions, and some of the legal expenses claimed in this matter pertain to representation in those other matters. The actions and applications filed with the courts and other tribunals were taken to attempt to remediate a situation that was caused solely by the Union.

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[25] Headnote.

[80] Lapchuk is claiming aggravated and punitive damages. Lapchuk suffers from chronic PTSD; the delay made it worse. The Union is responsible. PTSD compromises basic functioning. Lapchuk is asking for $100,000 for aggravated damages and $500,000 for punitive damages. This is justified, given the Union's position of trust as sole custodian of his rights. He had no voice in the arbitration except as they choose to give him one. The abuse of trust was almost total, and they have shown no indications of stopping. They will never stop blaming Lapchuk long enough to accept responsibility for their own actions. They are indifferent to the consequences to Lapchuk of their arbitrary, discriminatory and bad faith conduct.

[81] Lapchuk referred the Board to *Zurich Life Insurance Company Limited v Branco*[26] ["*Zurich*"]. That decision noted that the general objectives of punitive damages are punishment, deterrence and denunciation, and that the "focus of the quantum inquiry is not the plaintiff's loss but the defendant's conduct".[27]

Argument on behalf of Union:

[82] The Union argues that Lapchuk has not proven his losses, or that they were caused by the Union. Their "main points" are:

a) Lapchuk has not proven that there would have been any different outcome at the arbitration on the issue of cause for termination.

b) Lapchuk has not proven that there would have been any different outcome at the arbitration on the issue of reinstatement.

c) The evidence provided by Lapchuk and Petroski on the issue of mental injury/mental distress is unreliable and the Board should be cautious about relying on it.

d) The legal expenses being claimed by Lapchuk cannot be awarded against it because they relate to numerous other proceedings that are not attributable to the Union.

e) Lapchuk has not proven his claims to out-of-pocket expenses.

f) Lapchuk's claim is entirely statute barred by *The Workers' Compensation Act, 2013*.

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[26] 2015 SKCA 71 (CanLII).
[27] At para 96.

g) Lapchuk has not proven the need for a 45 percent income tax gross-up to income loss.

h) Any damages flowing from an award in this matter must be apportioned between the Union and Employer.

[83] In its oral argument the Union stated that, in the conduct of the arbitration, the Union did not do anything wrong. The actions of the Union are not the cause of Lapchuk not having his job. The Union disputes that the effect of the breaches of the duty of fair representation that the Board found in the Liability Decision would have yielded a different outcome at the arbitration. The Union argues that, even if it had led additional medical evidence at the arbitration, the Arbitrator still would have found against Lapchuk, and would certainly not have reinstated him. At the very most, the Arbitrator might have awarded him compensation in lieu of reinstatement. It argues that there is no medical evidence before the Board that Lapchuk is permanently disabled because of the Union's actions, or at all.

[84] The Union argues that Lapchuk was required to prove, at the Remedy Hearing, that but for their actions, the Arbitrator would have reinstated him or granted him damages in lieu of reinstatement. They say that, since he did not do that, he is not entitled to any damages. The Union argues that the Board's finding that, at this point, we can never know whether different action by the Union would have changed the outcome of the arbitration, forecloses his right to damages. The Union argues that they have proven that the Arbitrator made the right decision. Lapchuk could have led any evidence in this matter that he thinks should have been led at the arbitration. Since he did not do that, the Board should not award him any damages. The Union suggests that Lapchuk should have called at this hearing all of the expert witnesses that they could have called, but did not call, at the arbitration hearing, and since he did not, the Board should draw an adverse inference against him.

[85] The Union argues that Lapchuk's refusal, even to this day, to accept any responsibility for the Fort Qu'Appelle incident contributed significantly to the Arbitrator's decision and should be considered another factor weighing against any award of damages.

[86] In the alternative, if the Board finds that but for the Union's breaches, Lapchuk's grievances would have been successful, the Union argues that Lapchuk is not entitled to higher compensation from the Union than he could have achieved from a decision of the Arbitrator. At

most, the Board should award Lapchuk damages equivalent to what the Arbitrator would have awarded to him.

[87] The Union suggests that there are two options available to the Board to determine the quantum of damages for compensation in lieu of reinstatement: fixed term approach and retirement allowance approach. The Union urges the Board to adopt the retirement allowance approach, being based on a number of months per year of service (a range of one to two months) with a top up to account for loss of benefits, plus interest. They state that this is the approach used by this Union and this Employer, and referred the Board to one unreported decision in support of this premise[28].

[88] The Union filed numerous arbitration decisions that address this issue. The following are illustrative of the various findings of Arbitrators and the variety of rationales applied in determining an appropriate award.

[89] The Union referred to *McMaster University and Building Union of Canada (Malavolta), Re*[29] ["*Malavolta*"], which described the optional approaches as follows:

> *5 In matters dealing with compensation in lieu of reinstatement, arbitrators have applied one of two different methods in calculating the compensation. The first is the "fixed term approach" where the arbitrator projects how long he/she believes the grievor will remain in his/her job, which can be considered to be the grievor's projected date of retirement, and calculate the grievor's total wage loss from the date of termination to this date of retirement. Thereafter, the Arbitrator must deduct from that total amount a number of discounts for various contingencies, such as the likelihood of demotion or discharge, layoffs, or discontinuance of employment due to illness or accident, or voluntary resignation for any other reason, and must also deduct an amount based upon the likelihood of the grievor's ability to mitigate his lost wages. See for example, Hay River, supra, and Lakehead University, supra. The second method is referred to as "retirement allowance approach". In this method, the arbitrator calculates damages based upon a number of months per year of service with an additional amount, a "top up", to account for the loss of collective agreement benefits such as seniority, health and welfare and pension benefits. See for example, Humber River, supra, Toronto (Metropolitan)", supra, and Toronto Community Housing Corp. and CUPE, Local 79 (Hong-You), Re, supra.*

[90] In *Malavolta*, the Arbitrator chose to apply the retirement allowance approach because both parties preferred that approach. The Arbitrator found that the range for compensation was 1 to 1.5 months per year of service, with the most common being 1.25 months per year of service, plus 15 percent to compensate for the loss of collective agreement benefits. The Arbitrator stated

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[28] *SGEU v Government of Saskatchewan* (28 March 2011) (SK LA) Kenneth A. Stevenson, Q.C.
[29] 2020 CarswellOnt 2222 (ON LA).

that, while the grievor's past conduct is relevant to the fixed term approach, it is not relevant when applying the retirement allowance approach. In determining the appropriate multiplier, he stated:

> *It is my view, at the very least, one must look to the grievor's years of service, the position lost, the likeliness of reemployment, and specifically, the likeliness of reemployment in the same field in a unionized position.* (para 24)
>
> *The starting point should be one month per year of service (see* Canvil*, supra). Factors, such as years of service, position, and likeliness of obtaining similar unionized employment, can either move the multiplier up or down depending on the circumstances.* (para 26)
>
> *I agree with the majority of cases which have consistently held that damages in lieu of reinstatement are not subject to reduction based on mitigation or a failure to mitigate.* (para 28)

The arbitrator also awarded interest from the date of termination.

[91] In *Canvil v IAM & AW, Lodge 1547*[30], the Arbitrator stated:

> *Based on all the foregoing, I find that an appropriate approach to determination of the amount of damages awarded to the grievor in the instant case includes consideration of the following, in no particular order:*
>
> *• The remedy is to compensate the grievor for his loss of employment and loss of rights, benefits and privileges under the collective agreement.*
>
> *• The remedy does not represent on-going loss of wages from the time of termination of employment; accordingly mitigation is not a factor in determining the amount of damages.*
>
> *• The common law regime in cases of unjust dismissal under a collective agreement does not apply.*
>
> *• The grievor's conduct leading to the decision to discharge and the decision not to reinstate him his employment is not a relevant factor.*
>
> *• The remedy is not to replicate any notice period or monies in lieu of notice under the Employment Standards Act.*
>
> *• The grievor is entitled to monies that he would receive under the relevant provisions of the Employment Standards Act.*
>
> *• The remedy includes a percentage factor related to loss of fringe benefits available under the collective agreement.*
>
> *• The grievor's personal circumstances including, but not limited to, his years of service and age at the time of dismissal, education, and, employment prospects are relevant factors to be considered.*

[30] 2006 CarswellOnt 8408 (ON LA) at para 39.

The Arbitrator ordered payment of one month's pay per year of service, plus 15 percent for loss of collective agreement fringe benefits, plus pay in lieu of notice and severance pay payable pursuant to the *Employment Standards Act*, plus compound interest.

[92] In *Cassellholme Home for the Aged for the District of East Nipissing v CUPE, Local 146*[31], the Arbitrator stated:

> *Like the Metropolitan Toronto case, many of the other awards do not take account of mitigation, since the award does not represent an on-going loss of wages from the date of termination. Nor do the arbitrators consider the conduct of the grievor relevant to the question of compensation, since the grievor's actions have already been taken into account in the arbitrator's decision not to reinstate. Some of the decisions consider the grievor's prospects for employment, age and educational background. In the Canvil and De Havilland cases, the arbitrators added the employee's entitlement to notice and severance under the Employment Standards Act*; *in Nav Canada*, *the arbitrator added the employee's Canada Labour Code severance entitlement, since this payment differs from compensation for loss of rights under the collective agreement.*

The Arbitrator adopted the approach used in *Metropolitan Toronto (Municipality) and CUPE, Local 79 (Dalton) (Re)*[32] and awarded the grievor 1.25 months' pay per year of service plus 15 percent for the loss of benefits plus interest from the date of discharge to the date of payment.

[93] In *NAV Canada and IBEW, Local 2228 (Coulter) (Re)*[33] the Arbitrator granted 1.5 months' salary for each year of service plus a 15 percent fringe benefit factor plus interest from the date of dismissal plus severance pay calculated in accordance with the *Canada Labour Code*.

[94] In *Cameco Corporation v United Steel Workers of America, Local 8914*[34], the Court stated:

> *[40] A review of the arbitral jurisprudence indicates that arbitration boards routinely award compensation in lieu of reinstatement, which compensation includes a top-up amount for the added benefits of a collective agreement, without precise evidence of the monetary value of those benefits and without a precise calculation of the value of all of those benefits. Canvil v. I.A.M. and A.W. Local 1547, supra; Cassellholme Home for the Aged v. C.U.P.E. Local 146 (Morabito) (Re) (2007), 159 L.A.C. (4th) 251; DeHavilland Inc. , supra, Nav Canada and I.B.E.W., Local 2228 (2004), 2004 CanLII 94784 (CA LA), 131 L.A.C. (4th) 429.*
>
> *. . .*
>
> *[44] As I said earlier, most of the benefits under the collective agreement are easily quantifiable in monetary terms and can be valued as costs to the employer, such as premium pay benefits, sick leave benefits, disability and health care benefits. Others, such as seniority rights and protection from wrongful termination, which enhance the security*

[31] 2007 CanLII 6896 (ON LA) at para 10.
[32] 2001 CanLII 62110 (ON LA).
[33] 2004 CanLII 94784 (CA LA).
[34] 2008 SKQB 499 (CanLII).

> *and quality of employment, are important benefits to the employee but are not "costs" to the employer ("non-costs benefits"). Nevertheless they have value. All of these benefits, even those not precisely quantifiable, must be taken into account in quantifying damages in lieu of reinstatement. It is very difficult to assess with precision the value of being a particular member of a particular bargaining unit under a particular collective agreement.*

The Court noted that the usual range applied by arbitrators is 1.25 to 1.75 months of pay for each year of service plus a top-up of 13 to 15 percent for the added benefits of a collective agreement. However, the Court upheld the Arbitrator's decision to award 2 months of pay for each year of service plus a top-up of 25 percent, finding that these amounts were not unreasonably high nor unreasonably outside the ranges.

[95] In *CUPE, Local 3473 v Louis Riel School Division*[35], the Arbitrator declined to reduce damages for lack of mitigation and awarded a 15 percent top up:

> *50 That being said, once the evidence relating to the grievor's conduct towards his employer has been considered in declining reinstatement, the nature of that conduct is not relevant to an award of damages. I agree with the Union, and with the bulk of the relevant authorities that the damages awarded should be a reflection, as much as is possible, of the value of the loss of the benefit of being protected by a collective agreement.*
>
> *. . .*
>
> *53 The decisions tendered range from a low of one month per year of service to upwards of 1.75 months per year of service. Ms. Barr urged me to award two months per year of service, while Mr. Simpson submitted that the award should be on the lower end, specifically at less than one month per year of service. From reviewing the authorities submitted to me, it is my determination that a factor of 1.25 months per year of service should be used to calculate the amount owing as damages. The grievor's age - he is in his early seventies - suggests that he will have difficulty replacing employment, which is a factor to be considered in this exercise.*

[96] In *Regina (City) v Regina Civic Middle Management Association*[36], the Arbitrator stated:

> *. . . The approach that assesses the value of the loss of a Grievor's rights under the collective agreement in effect views the loss of the employment as the loss of a capital asset rather than a replacement of salary.* (para 19)
>
> *. . . in assessing damages it is appropriate to place additional value on the loss of rights conferred to an employee by a collective agreement.* (para 20)
>
> *. . . In summary, the Saskatchewan approach is that collective bargaining rights are a proper consideration for arbitrators in determining the quantum of damages but both the duty to mitigate and the conduct of the grievor can be taken into account.* (para 21)

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[35] 2017 CanLII 26152 (MB LA).
[36] 2014 CanLII 86901 (SK LA).

[97] Next the Union turned to the issue of the legal expenses claimed by Lapchuk. The Union argues that the Board rightly adopts a cautious approach to claims for legal expenses[37] and should do so in this case. The Union points out that a portion of the legal expenses Lapchuk claims were for LRB File No. 353-13, which was dismissed. As well, although Lapchuk was successful in this matter, his success was mixed, and the Union requests that any award for legal expenses take that into account. The Union argues that even when the Board has awarded an applicant in a duty of fair representation case an amount for legal expenses, there is no precedent for an award of full indemnification.

[98] The Union argues that this is not an appropriate case in which to grant Lapchuk any amount to defray his legal expenses. However, if the Board determines that it will, it should not be for the entire number of days of the hearing because, in its view, Lapchuk took a number of positions that unnecessarily lengthened the hearing.

[99] The Union argues that Lapchuk demonstrated he was able to represent himself without legal counsel. They also argue that their actions were less egregious than in cases where a union does not even file a grievance on their member's behalf. Compensation for legal expenses is an extraordinary remedy and Lapchuk has not proven that the necessary exceptional circumstances exist in this matter to justify an award. The Board should also take into account that the Union will have to bear the expense of its own legal fees.

[100] With respect to legal expenses for proceedings other than this matter, the Union argues that this request is extraordinary and not appropriate. For matters before the Courts, the Courts have discretion to determine costs and, in some of those matters, did order costs. With respect to other tribunal matters (Occupational Health and Safety; Saskatchewan Human Rights Commission; WCB), the Union was not a party to any of those matters. Further, it is within the authority of those tribunals to determine if and when costs are payable. The Union also argues that legal expenses arising from Lapchuk's disputes with the Union respecting his entitlement under its long term disability plan are unrelated to this matter.

[101] With respect to the other out-of-pocket expenses Lapchuk claims, the Union argues that he has not provided a sufficient foundation for them. In their view, it was not necessary for

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[37] *Johnson v Amalgamated Transit Union, Local 588 and City of Regina*, [1998] Sask LRBR 98; *Petite v International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 555*, 2009 CanLII 27858 (SK LRB); *Hartmier v Saskatchewan Joint Board Retail Wholesale and Department Store Union and Retail, Wholesale and Department Store Union, Local 955*, 2017 CanLII 20060 (SK LRB).

Lapchuk to hire an actuary for this matter. They argue that the Analysis of Digital Images Report prepared by Michael Plaxton was prepared for a different matter. They argue that the report of Lapchuk's forensic analyst[38] was unnecessary.

[102] With respect to Lapchuk's claim for non-pecuniary damages, the Union argues that the amount claimed for mental distress is quite large. *Zurich* fixed a notional maximum of $350,000 for non-pecuniary damages. Moral damages are limited in employment law. It refers to *Capital Pontiac Buick Cadillac GMC Ltd v Coppola*[39] ["*Coppola*"], where the Court of Appeal for Saskatchewan upheld an award of $20,000 for moral damages in a wrongful dismissal case, finding that this amount fell within the range of moral damages previously awarded in such circumstances, being $5,000 to $25,000.

[103] The Union argues that there are multiple causes of Lapchuk's psychological harm. He provided a limited picture of his overall health and the extent of the nature and causes of his psychological injury. The Union acknowledged that the Supreme Court of Canada has recently held that medical evidence is not necessary before an award for mental distress can be made, but argued that he should have provided it and the Board should require it. The Union then underwent a detailed analysis of its view of the shortcomings of the medical evidence provided by Lapchuk in this matter. It urged the Board to rely on Dr. Brodie's opinion rather than Petroski's opinion with respect to Lapchuk's medical condition. It argued that this matter is comparable to *Marcel Avram v United Association of Plumbers and Steamfitters Local 46*[40] where the Ontario Labour Relations Board ordered $4,500 as general damages for damage to dignity and self-respect and for emotional distress, on the following basis:

> *In terms of causation, there is an enormous difference in my view between proving that a party's conduct caused emotional distress, and injury to self-respect and the dignity of the person, on the one hand, and proving that the same conduct caused a mental illness to develop and led to an inability to work on a permanent basis on the other. I do find that the former occurred, but am not satisfied of the latter, as indicated above.*

[104] Next the Union argued that the Board should not award punitive damages. This case does not meet the criteria established by *Zurich*, such as evidence of a pattern of behaviour or profit motive. Additionally, the Board's comment in the Liability Decision that remedies are to be

[38] See Liability Decision, para 98.
[39] 2013 SKCA 80 (CanLII).
[40] 2019 CanLII 66861 (ON LRB) at para 46.

compensatory, not punitive, would seem to indicate that the Board has already determined that punitive damages are not available.

[105] The Union also argues that the Board cannot find that it is the cause of Lapchuk's injuries because the WCB 2018 Decision found that his disability was caused by the 2012 Fort Qu'Appelle incident. The WCB does not single out the Union as the cause, rather, it is the whole package of complaints and processes that caused his injuries. The Union relies on section 43 of *The Workers' Compensation Act, 2013*:

> *43 No employer and no worker or worker's dependant has a right of action against an employer or a worker with respect to an injury to a worker arising out of and in the course of the worker's employment.*

This, it argues, means that workers are barred not only from taking actions against their direct employers, but from taking any actions involving the workplace when they have been injured at the workplace. All claims arising out of or related to a workplace injury are barred.[41]

[106] Lapchuk has received WCB benefits corresponding to the entire period from when he was terminated until the current time. This means, they argue, that the WCB has accepted that Lapchuk's workplace injury is the cause of his disability. The Union argues that his claim for damages from the Union is an attempt at a collateral attack on the WCB's findings. Alternatively, WCB is not subrogated to his claim, therefore if the Board awards Lapchuk any damages, the amount of WCB benefits received in this time period should be deducted from the amount awarded.

[107] The next issue raised by the Union is whether Lapchuk has proven that a tax gross-up of 45 percent of total lost earnings should be awarded. In *Cadieux v Amalgamated Transit Union, Local 1415*[42], the Canada Industrial Relations Board dismissed the complainant's request for payment of an additional amount for tax gross up in a duty of fair representation case, stating that "A tax gross up is generally not awarded and the Board does not see sufficient grounds to justify this exceptional measure in this case."

[108] Further, the Union argues, Lapchuk has not proven that the claimed compensation would be taxable as income. For example, loss of earning capacity is not normally taxable because it is compensation for loss of an asset, the capacity to earn.[43] His claim is for future loss of earning

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[41] *Janvier v Saskatchewan (Workers' Compensation Board)*, 2021 SKCA 170 (CanLII).
[42] 2016 CIRB 836 (CanLII) at para 115.
[43] *Boucher v Wal-Mart Canada Corp.*, 2014 ONCA 419 (CanLII); *MacDonald v Neufeld*, 1993 CanLII 2252 (BCCA).

capacity. He is claiming that he has lost the ability to work, which is a claim for personal injury damages, which are not taxable.[44]

[109] Next the Union argues that, if the Board orders that compensation is payable to Lapchuk, the Employer should be ordered to pay a portion of that compensation. This, it argues, is because if the Union failed to get Lapchuk's job back, when it ought to have, that is only because he was wrongfully terminated. If he was wrongfully terminated, that is the Employer's wrongful act.

[110] The Union argues that if the Board does not make a finding that the Employer discriminated against and wrongfully terminated Lapchuk, then it cannot make a finding that he ought to have been reinstated or that the Union owes him the full extent of damages now being claimed. The Union argues that it did not cause Lapchuk's losses. If he was wrongfully terminated by the Employer, the losses flowing from that termination are the responsibility of the Employer.

[111] Finally, the Union turned to a critique of the Jocsak Report. Its primary complaint with the Report is that its approach is not supportable in law and its assumptions have not been proven. The Union also raised specific issues with the Report. First it states that the scenarios in the Report rely on a difference between Lapchuk's expected income and his WCB benefits that are calculated in a manner that is too favorable to Lapchuk and amplify his damages. Second, it argues that in the ages 65 and 70 scenarios Jocsak did not account for an additional 10 percent WCB retirement benefit that the Union suggests Lapchuk will be entitled to receive.[45]

Argument on behalf of Employer:

[112] First, the Employer argues that the Board has no jurisdiction to order that Lapchuk be reinstated. Under section 6-49 of the Act, the decision of the Arbitrator on that issue is final and binding.[46]

[113] Second, the Employer argues that there is no basis in law or evidence for the Union to suggest that the Board should apportion responsibility for damages between the Union and the Employer. The concept of apportionment arises from cases in which Labour Boards have ordered

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[44] Income Tax Bulletin IT365R2, www.canada.ca/en/revenue-agency/services/forms-publications/current-income-tax-interpretation-bulletins.html.

[45] There was no evidence before the Board respecting a WCB retirement benefit. The Union questioned Jocsak about this benefit, but he had no knowledge of it. They did not ask Lapchuk about it.

[46] *Gendron v. Municipalité de la Baie-James*, 1986 CanLII 62 (SCC), [1986] 1 SCR 401; *Re Windsor Western Hospital Centre Inc. and Mordowanec et al.*, 1986 CanLII 2635 (ON SC); *Strohan v Saskatchewan Government and General Employees' Union and Government of Saskatchewan*, 2019 CanLII 43222 (SK LRB).

unions to proceed with grievances to arbitration, after being found to have breached the duty of fair representation. That is not what happened in this case. Labour Boards introduced the concept of apportionment to protect employers from increased damages that result from the conduct of unions.[47] Apportionment is a shield for an employer, not a sword for a union.

[114] Under section 6-104 of the Act, since there has been no finding of fault on the part of the Employer, the Board has no authority to apportion any liability to the Employer. The Employer is not responsible for damages that are the fault of the Union.

Relevant Statutory Provisions:

[115] The following provisions of the Act are applicable in determining an appropriate remedy in this matter:

> *6-49(2) The finding of an arbitrator or arbitration board:*
>
> > *(a) is final and conclusive;*
> >
> > *(b) is binding on the parties with respect to all matters within the legislative jurisdiction of Saskatchewan; and*
> >
> > *(c) is enforceable in the same manner as a board order made pursuant to this Part.*
>
> *6-104(2) In addition to any other powers given to the board pursuant to this Part, the board may make orders:*
>
> > *(e) fixing and determining the monetary loss suffered by an employee, an employer or a union as a result of a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board by one or more persons, and requiring those persons to pay to that employee, employer or union the amount of the monetary loss or any portion of the monetary loss that the board considers to be appropriate.*

Analysis and Decision:

Reinstatement:

[116] Reinstatement is not an available remedy in this matter because the Arbitrator has already determined that Lapchuk will not be reinstated. The Board has no jurisdiction to overturn the Arbitrator's decision. The Employer referred the Board to Labour Relations Board Remedies in Canada[48] which, in reference to *Gendron v Municipalité de la Baie-James*[49], noted:

> *The Supreme Court of Canada has ruled that a statutory provision making an arbitral award final and binding puts it beyond the jurisdiction of a labour board to set aside an award and order arbitration after an award has been issued on the merits of a grievance.*

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[47] *FVM v Glass, Molders, Pottery, Plastics & Allied Workers International Union*, 2013 CanLII 71975 (MB LB).
[48] Release 11, November 2018 (Toronto: Canada Law Book, 2013), at para 15:2300.
[49] *Supra* note 46.

Section 6-49 of the Act contains that provision. It states that the Arbitrator's decision that Lapchuk is not to be reinstated, is final and binding.

The Workers' Compensation Act, 2013:

[117] The Union argued that Lapchuk's claim for damages in this matter is barred by the following provisions of *The Workers' Compensation Act, 2013*:

> *2(1) In this Act:*
>
> *. . .*
>
> *(h) "compensation" means compensation payable pursuant to this Act with respect to an injury;*
>
> *. . .*
>
> *(r) "injury" means all or any of the following arising out of and in the course of employment:*
>
> *(i) the results of a wilful and intentional act, not being the act of the worker;*
>
> *(ii) the results of a chance event occasioned by a physical or natural cause;*
>
> *(iii) a disabling or potentially disabling condition caused by an occupational disease;*
>
> *(iv) any disablement.*
>
> *43 No employer and no worker or worker's dependant has a right of action against an employer or a worker with respect to an injury to a worker arising out of and in the course of the worker's employment.*
>
> *167(1) No action or proceeding lies or shall be commenced for the recovery of compensation.*
>
> *(2) All claims for compensation must be heard and determined by the board.*
>
> *168 This Act and the regulations apply instead of all rights and causes of action, statutory or otherwise, to which a worker or the worker's dependants are or might become entitled against the employer of the worker by reason of any injury to the worker arising out of and in the course of employment of the employer.*

[118] The Board agrees that in *The Workers' Compensation Act, 2013* the Legislature has committed exclusively to the WCB the question of when the statutory bar applies:

> *169(1) Any party to an action may apply to the board for adjudication and determination of the question of:*
>
> *(a) the plaintiff's right to compensation pursuant to this Act; or*
>
> *(b) whether the action is barred by this Act.*

> *(2) The board's adjudication and determination pursuant to this section is final and conclusive.*

[119] With respect to one of the Statements of Claim filed by Lapchuk in the Court of Queen's Bench in response to his termination, the Employer made an application to the WCB for a determination whether the action was barred by *The Workers' Compensation Act, 2013* ["WCB 2015 Decision"]. The Union says that since the WCB 2015 Decision finds that the Union is an employer, any action against it related to Lapchuk's work injuries and/or the relapses of those work injuries and the associated claimed costs is barred by *The Workers' Compensation Act, 2013*. However, what the Union neglected to mention is that the WCB 2015 Decision also states:

> *However, with regard to Mr. Lapchuk's grievances in relation to his suspension and termination from employment, this has no relationship to his work injuries and has no bearing on whether or not his work injury claim was accepted or denied. WCB does not have any jurisdiction to reinstate Mr. Lapchuk's employment or rule on whether or not he should have been suspended or terminated from employment. This ruling lies completely outside of WCB's jurisdiction.* (page 12)
>
> . . .
>
> *However, the Board finds that WCB has no jurisdiction with regard to the SGEU suspension and termination grievances as this part of the action has no relationship to the WCB work injury claim. As such, the Board finds that this portion of the action is not barred by the Act.* (page 13)

[120] In other words, the WCB has already determined that the damages suffered by Lapchuk arising out of the Union's conduct did not arise out of or in the course of his employment. Therefore, *The Workers' Compensation Act, 2013* is not a bar to an award of damages in this matter. The jurisdiction to review and provide a remedy for the actions of the Union belongs to the Board, not the WCB.[50]

Liability of Employer:

[121] The Board rejects entirely the Union's arguments that the Employer should be held responsible for any damages ordered in this matter. No claim was made against the Employer in this matter. No finding of fault was made against the Employer in this matter. Therefore, no damages are payable by the Employer.

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[50] See also *Lapchuk v Saskatchewan (Highways)*, 2017 SKCA 68 (CanLII).

Lapchuk's burden of proof in the Remedy Hearing:

[122] The Union argued that a central part of the Remedy Hearing was whether the Union caused Lapchuk a loss in its failure to call certain medical evidence or witnesses. This is totally wrong. The Board has already found the Union is liable. The Union repeatedly suggested that Lapchuk should have called the evidence at the Remedy Hearing that they neglected to call at the arbitration, and went so far as to suggest that the Board should draw an adverse inference against Lapchuk for failing to do so. The Board does not agree. The Remedy Hearing is not a do-over of the arbitration. The only issue before the Board is quantification of damages. The Remedy Hearing is not an opportunity to re-run the arbitration and decide if it would have been successful if Lapchuk had been in charge of deciding what evidence to tender. The Remedy Hearing is not a vehicle (nor is it a goal of the Remedy Hearing) to determine whether the result in the arbitration was correct.

[123] The Board has already found that the Union is at fault for Lapchuk's current situation. They were charged with responsibility for protecting Lapchuk's interests and in the many ways outlined in the Liability Decision, they failed. The task for the Board now is to calculate the damages that they caused through their wrongful acts.

[124] The Board is satisfied that the evidence proves that the Union's actions caused Lapchuk to suffer loss. In this regard the Board relies on Petroski's expert opinion. The Board does not accept Dr. Brodie's opinion that Lapchuk is malingering or exaggerating the extent of his mental health issues in an attempt to gain sympathy or financial compensation. Dr. Brodie suggested that Dr. Litke and Dr. Arnold did not properly assess or do the proper testing for malingering. He said it was a possibility that should have been evaluated. Dr. Brodie speculated that additional testing may have produced a different result. Petroski disagreed with this suggestion. The Board does not make its decisions on the basis of speculation, but on the basis of evidence. Petroski had the distinct advantage over Dr. Brodie of interacting with Lapchuk over a number of years. As a result, and based on the admitted false statements in Dr. Brodie's report, where the two experts' opinions conflict, the Board relies on Petroski's opinion.

[125] The Union argues that there is no evidence before the Board that Lapchuk had a diagnosis of PTSD before the Fort Qu'Appelle incident. That is not true. The WCB 2018 Decision states:

> *A further complicating factor is the fact that Mr. Lapchuk suffered from PTSD before the injury. Although he had been symptom free for about 2 years before October 17, 2012, he retained a pre-existing vulnerability that was prone to be triggered.* (page 2)

At page 16 the WCB 2018 Decision also noted that he had first been diagnosed with PTSD at some point between 2002 and 2005.

[126] Alternatively, the Union argued that the purpose of the Remedy Hearing was not to re-run the arbitration, but the onus was on Lapchuk to demonstrate the outcome of the arbitration would have been different had the Union called the evidence outlined in the Liability Decision, and the evidence fails to establish this. The Union argued that the whole purpose of the Remedy Hearing was for Lapchuk to prove that the Union mismanaged his disability defence and that it would have been possible or easy or likely that there would have been a different outcome if they had not breached their duty of fair representation. The onus, they say, is on Lapchuk to prove what difference this would have made. The Union's position is that it is clear that, no matter what they did, it is unlikely the Arbitrator would have come to a different decision.

[127] The Board disagrees with all of those arguments. The Union at several points bases these arguments on findings of the Arbitrator. What the Union fails to acknowledge, though, is that the Arbitrator made those findings because of and based on the case they put before her. The Arbitrator's decision outlines all of the shortcomings in the Union's evidence; those shortcomings are attributable to the Union's conduct of the case. The reason the Board is considering this issue is because of the Union's conduct.

[128] The Board does not have to find that the Arbitrator was wrong before it has authority to award damages. As noted above, this Board has no jurisdiction to make a determination that she was wrong. That does not lead to a conclusion that the Board cannot award damages to Lapchuk for the Union's wrongful conduct and the damage it caused him.

[129] The Union stated, in their Brief of Law:

> *Both to this Board and to Petroski, Lapchuk sought to leave the impression that the Union traumatized him during the conduct of the arbitration hearing itself. Respectfully, this is not borne out by the evidence and is a mischaracterization of the findings of the Board.* (para 152)

In fact, this is clearly borne out by the evidence and is not a mischaracterization of the findings of the Board.

[130] The Union relies on *Neish v International Brotherhood of Electrical Workers, Local 2067*[51] to argue that the Board should decline to award compensation in this matter, as it did in that matter. However, in that matter the Board found that there was no evidence of monetary loss; in this matter there is considerable evidence of monetary loss.

[131] The Board agrees with and adopts the description in *Eamor v ALPA*[52] of the task before the Board:

> *8 The purposes of the Board's remedy in the present case is to restore the complainant to the position he would have been, had no violation of the Code occurred; put another way, the compensation ordered should counteract, as much as possible, the consequences of the union's breach of the Code.*
> *. . .*
> *13 In keeping with the purposes outlined in* Royal Oak Mines Inc.*, supra*, *the critical consideration, is whether or not the remedy requested of the Board, as it relates to each of the claims made, is "rationally connected or related to the breach and its consequences." If so, the Board must attempt, as reasonably and fairly as possible, to make the complainant whole.*

[132] Relying on an excerpt from an unreported decision[53] referenced in *Bridges v UNITE Here, Local 47* ["*Bridges*"], the Union asks the Board to deny Lapchuk damages on the basis of the following comment made in that decision: "It would be a serious error for the Board to assume that any grievance, frustrated by a breach of the duty of fair representation, would have succeeded if it had been arbitrated". However, *Bridges* goes on to reject that approach:

> *[29] The Ontario Labour Relations Board addressed the apparent arbitrariness of this approach to assessing damages in Radio Shack, [1979] OLRB Rep. Dec. 1220 (jud. rev. denied, in Re Tandy Electronics Ltd., and United Steelworkers of America et al. (1980), 30 O.R. (2d) 29, 80 CLLC 14,017 (Ont. Div. Ct.), leave to appeal to Ontario Court of Appeal refused March 10, 1980, 29 O.R. (2d) 29 n):*
>
> > *101. It can, of course, be argued that damages for the loss of such an opportunity are too speculative to estimate and if arbitrarily set would be punitive in nature - a result that would appear to contravene the first tenet discussed. The argument, however, is inconsistent with the long accepted principle that one whose wrongful act precludes the exact determination of damage should not be able to evade his duty to compensate for that damage because of an uncertainty caused by his own wrongdoing. See Mayne and McGreger on Damages 12th ed., 1961, para. 174. In private litigation before our courts, a party is not burdened with an unattainable standard of accuracy in the assessment of damages. Business losses in commercial law suits and the compensation awarded in personal injury cases to*

[51] 2022 CanLII 20565 (SK LRB).
[52] 1998 CarswellNat 2918 (CLRB).
[53] *Barry Martin v Allied Food and Commercial Workers Union Local 397*, Alta LRBD 85-048, referenced in *Bridges v UNITE Here, Local 47*, 2011 CanLII 62464 (AB LRB), para 27. The Union did not provide the Board with a copy of the *Barry Martin* decision.

> *persons who may never have been employed are important examples. See for example: Withers v. General Theatre Corporation, [1933] 2 K.B. 536; Roach v. Yates, [1938] 1 K.B. 256 (C.A.). Even more directly in point are those cases that explicitly grapple with the wrongful loss of an economic opportunity.*
>
> *[30] After reviewing several such cases, the Board concluded:*
>
> > *111. If the courts have not shied away from attempting to provide effective monetary relief for the violation of private rights, should the Ontario Labour Relations Board be any less sensitive when confronted with the intentional defiance of statutory policy? The answer must surely be in the negative unless this approach conflicts fundamentally with more important principles and we do not think this is the case.*

[133] The purpose of the compensation ordered by the Board is to counteract as much as possible the consequences of the Union's arbitrary, discriminatory and bad faith conduct. The Board agrees with the finding referred to in *Bridges* that "one whose wrongful act precludes the exact determination of damage should not be able to evade his duty to compensate for that damage because of an uncertainty caused by his own wrongdoing." The Board will not burden Lapchuk with an unattainable standard of accuracy in the assessment of damages. The Board will not shy away from attempting to provide effective monetary relief for the Union's deliberate and egregious breaches of their duty of fair representation, even if it is not precisely or easily quantifiable.

[134] Further, and in a manner consistent with the findings in the WCB 2018 Decision, the Board finds that the fact that there are other causes of Lapchuk's situation does not relieve the Union of liability for the damages they caused.

[135] The Board is satisfied that Lapchuk has met his burden of proving that the Union's conduct caused him damage. At this point, then, the Board will examine each of the heads of damages claimed by Lapchuk to determine whether they flowed from the Union's conduct.

Legal expenses:

[136] Lapchuk discharged his counsel partway through the Liability Hearing. He was represented by counsel for all of the Remedy Hearing. While Lapchuk did an admirable job of representing himself, the Board finds that it was reasonable for Lapchuk to have had legal assistance during the hearing of this matter.

[137] The Union referred to *Johnson v Amalgamated Transit Union, Local 588 and City of Regina*[54] ["*Johnson*"], where the Board stated:

> *12 With respect to the claim for monetary loss related to legal fees incurred by Mr. Johnson in bringing the application for an unfair labour practice under s. 25.1 of the Act, the Board addressed this issue in the K.H case, supra, and held that in exceptional circumstances such claims will be allowed. In that instance, the applicant was suffering from a mental illness which impaired his ability to represent himself in relation to his employment problems. However, the Board generally adopts a cautious approach to claims for damages of this nature. In Stewart v. Saskatchewan Brewers' Bottle & Keg Workers, Local Union No. 340, [1996] Sask. L.R.B.R. 386, LRB File No. 025-95, the Board reviewed the practice in other jurisdictions and concluded as follows, at 395:*
>
> > *We are of the view that, like the legislation which is the basis of the decisions of the Canada Labour Relations Board and the British Columbia Labour Relations Board, the Act confers upon this Board broad powers to fashion remedies like the "make-whole" remedies described in those decisions. The powers granted to the Board in ss. 5(e) and (g) of the Act, along with the general remedial power under s. 42 of the Act, permit us a wide latitude in devising remedies which will address the losses suffered by applicants in the context of the objectives of the Act.*
> >
> > *In this connection, it is perhaps helpful to think of legal expenses in terms other than the notion of "costs" as it is understood in connection with proceedings in civil courts. For reasons which have been alluded to earlier, this Board has never considered it appropriate to award costs in that sense of the term as part of the determination of applications under the Act. This does not mean that there are not circumstances in which the expense of obtaining legal advice might not be part of an extraordinary "make-whole" remedy. In some cases, the essence of the infraction which is alleged by an applicant concerns the representation to which an employee is entitled under the Act. In this sense, granting some compensation for the use by an applicant of the services of a solicitor is more akin to compensation for a breach of fiduciary duty than to costs in their traditional sense.*
> >
> > *. . .*
> >
> > *We must also admit to a concern that we not encourage the view that proceedings before this Board can only be undertaken effectively when an applicant is represented by legal counsel. The Board makes considerable efforts to remain accessible to parties who are not represented by lawyers, and to conduct hearings in which a lay person can participate.*
> >
> > *Nonetheless, there are, in our opinion, circumstances in which it is justifiable to consider a remedial order to assist an applicant with the expenses associated with legal representation. We expressed our view in our earlier Reasons for Decision that the circumstances which gave rise to this application are exceedingly unusual. As the British Columbia Board pointed out in the Kelland case, supra, not all cases in which a trade union has committed a breach of the duty of fair representation are cases in which that union has completely disqualified itself from further representation of the complainant. Similarly, not all cases in which an applicant wishes to raise complaints about defects in the procedures followed by a trade union are cases in which the applicant should be permitted to make use of legal services at the expense of the trade union.*

[54] *Supra* note 37.

[138] In *Hartmier v Saskatchewan Joint Board Retail Wholesale and Department Store Union and Retail, Wholesale and Department Store Union, Local 955*[55] ["*Hartmier*"] the Board awarded damages for a portion of the applicant's legal expenses, in the amount of $1,000 per sitting day:

> *Applying the principles that emerge from these authorities, the Board concludes that this is one of those rare circumstances where an Order should be made directing the Union to reimburse the Applicant for a portion of her legal expenses. It must be remembered that an order of this kind is discretionary. Furthermore, it is not intended to provide full indemnification of such expenses; rather, as this Board noted in Stewart, supra, it should be viewed as compensating an applicant for a breach of the statutory duty owed to him or her by the Union.*

The Board gave two reasons for determining that the award was appropriate in that case: the union failed to deal with the grievances in a serious or responsible way; and the collective agreement allowed the union to claim legal costs from the applicant if her application was unsuccessful.

[139] *Johnson* referred to another decision in which the Board considered the issue of awarding compensation to a duty of fair representation applicant to reimburse him for expenses incurred in seeking legal representation. In that case, *K. H. v Communications, Energy and Paperworkers Union, Local 1-S and SaskTel*[56], the Board stated:

> *The Board adopts the Stewart rationale and agrees that, in exceptional circumstances, employees may be reimbursed for the expenses they incurred in seeking legal representation prior to and during the hearing of an application under s. 25.1. In the present case, the Board is of the view that exceptional circumstances do exist to justify the payment of legal expenses incurred by the Applicant in dealing with his grievances and in making representations before this Board. The evidence before the Board indicated that the Applicant was suffering from a mental disability which rendered him ineffective in attending to his own employment problems. . . .*
>
> *It would appear to the Board to be a predictable outcome of the Union's failure to fairly represent KH. that he would engage the services of legal counsel. KH. was suffering from a disability that rendered him incapable of adequately representing himself or articulating his interests. KH. engaged independent counsel initially to assist in the filing of grievances and the grievance handling and later, to represent his interests before the Board on the remedial portion of the matter. KH. did represent himself before the Board during the main hearing, but this may have resulted more from an inability to pay for legal representation than from a desire to be unrepresented. In our view, the expenses KH. incurred in obtaining advice and representation from Mr. Williams was a direct result of the Union's breach of its duty of fair representation, and such expenses are a monetary loss of the sort contemplated under s. 5(g) of the Act. The Union was aware that KH. suffered from a mental disability and was impaired in his ability to represent himself in relation to the Union's processes. In these unique circumstances, the Board will order the Union to reimburse KH. for the legal expenses incurred by him up to and including the hearing*

[55] *Supra* note 37, at para 243.
[56] [1998] Sask. LRBR 76 at p. 83 and 84.

> *concluded on October 17, 1997. If the parties are unable to agree on the amount owing to KH. the matter can be remitted to the Board for a final determination by either K.H. or the Union.*

[140] As the Board stated in *Stewart v Saskatchewan Brewers' Bottle & Keg Workers, Local Union No. 340*[57], granting some compensation for the use by Lapchuk of the services of a lawyer is more akin to compensation for a breach of fiduciary duty than to costs in their traditional sense. The Union suggested that its conduct in this matter is less egregious than cases where unions have failed to file grievances or take them forward to arbitration. That statement is another example of the Union's inability or unwillingness to acknowledge the seriousness of their breaches of their duty of fair representation. As noted in the Liability Decision, the Board found the Union's conduct in this matter to be particularly egregious.

[141] Based on the decisions referred to above, the Board is satisfied that this is the kind of exceptional case in which compensation should be awarded to Lapchuk to address some of the expenses he incurred in obtaining legal assistance in the hearing of this matter. These expenses were incurred as a direct result of the Union's breach of its duty of fair representation.

[142] Based on *Hartmier*, which was decided eight years ago, the Board has determined that it would be appropriate to award Lapchuk $1,250 for each day of the hearing in which he was represented by counsel. Lapchuk was represented by counsel for 20 days of the hearing: 13 days during the Liability Hearing and 7 days during the Remedy Hearing.

[143] With respect to the applications to courts and other tribunals, Lapchuk has not satisfied the Board that those costs flow directly from the Union's breaches outlined in the Liability Decision. Compensation for legal expenses attributable to those matters is an issue to be determined by those tribunals and courts.

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[57] [1996] Sask. LRBR 386.

Out-of-pocket expenses:

[144] Besides legal expenses, the other out-of-pocket expenses claimed by Lapchuk[58] include:

Fee for handwriting expert	$4,011.50
Failure to return stolen equipment	$2,500.00
Out-of-pocket expenses	$19,303.48
Invoice and testimony of Jocsak	$3,405.00
Testimony of Petroski	$1,000.00
TOTAL	$30,220.00

[145] The Board has determined that the following amounts are reasonably incurred expenses that are rationally connected to the Union's breach of its duty of fair representation:

Invoice and testimony of Jocsak	$3,405.00
Testimony of Petroski	$1,000.00

Lapchuk will be compensated for these costs.

[146] The Board declines to compensate Lapchuk for the cost of his handwriting expert, since he did not tender her report into evidence. The claim for failure to return stolen equipment is also denied, given that Lapchuk's claim in this regard is against the Employer, not the Union.[59] Lapchuk claims $16,542.68 for health care expenses for himself and his family from December 16, 2013 to December 31, 2021. The Board was not provided with specific details respecting the health plan Lapchuk was previously entitled to, from which to make a determination whether it would have covered all of these expenses. Therefore, the Board will award Lapchuk $8,271, representing half of the claimed amounts. Lapchuk also claimed $1,775.50 for reports from Petroski and his family doctor, Dr. Cheshenchuk. One of those reports was entered as an exhibit[60] in this matter. Lapchuk will therefore be reimbursed for its cost, $85. There is no evidence before the Board respecting the purpose for which the other reports were prepared, therefore no compensation will be provided for those costs. Both Lapchuk and the Union made submissions in oral evidence respecting the Plaxton Report. There was no evidence before the Board

[58] Jocsak Report p. 13/14.
[59] See *Lapchuk v Saskatchewan (Highways)*, *supra* note 50.
[60] It was entered two times, as Exhibits U52 and U80. The invoice for the report was also entered, as Exhibit A32.

respecting its cost, either in the Jocsak Report or otherwise. Accordingly, the Board cannot address that issue.

Gross-up for income taxes:

[147] The Board finds that there is no proof that the damages in this matter will be taxable. Income Tax Bulletin IT365R2 states:

> *Amounts received as Damages in Respect of Personal Injury or Death*
> *2. Amounts in respect of damages for personal injury or death may be received by an injured taxpayer or by a dependant of a deceased taxpayer on account of:*
>
> *(a) Special damages - examples are compensation for*
>
> *(i) out-of-pocket expenses such as medical and hospital expenses, and*
>
> *(ii) accrued or future loss of earnings and*
>
> *(b) General damages - examples are compensation for*
>
> *(i) pain and suffering,*
>
> *(ii) the loss of amenities of life,*
>
> *(iii) the loss of earning capacity,*
>
> *(iv) the shortened expectation of life and*
>
> *(v) the loss of financial support caused by the death of the supporting individual.*
>
> *All amounts received by a taxpayer or the taxpayer's dependant, as the case may be, that qualify as special or general damages for personal injury or death will be excluded from income regardless of the fact that the amount of such damages may have been determined with reference to the loss of earnings of the taxpayer in respect of whom the damages were awarded. However, an amount which can reasonably be considered to be income from employment rather than an award of damages will not be excluded from income. The tax treatment of an award of compensation, as adjudicated by a compensation board or commission in Canada, which is received as a result of a worker having suffered injury, disability or death while performing the duties of employment, is explained in IT-202R2.* (emphasis added)

[148] The damages awarded in this matter are for loss of earning capacity, compensation for the loss of an asset. They do not represent an ongoing loss of earnings. While the damages are calculated with reference to Lapchuk's loss of earnings, they are not income from employment, in the same way as they would have been if they had been granted by the Arbitrator against the Employer. The Board declines to order damages for an income tax gross-up.

Pre-judgment interest:

[149] The Board notes that the arbitration cases that the Union provided to the Board indicate that the standard practice is for pre-judgment interest to be added to compensation, commencing from the employee's date of termination. The Union agreed that pre-judgment interest should be added to any award made by the Board. Therefore, the Board has determined that it is appropriate to add pre-judgment interest. The Board does not accept Jocsak's calculation of interest. That calculation is appropriate for a wrongful dismissal case, which this is not. In this case, the loss is loss of earning capacity.

[150] *The Pre-judgment Interest Act* does not, on its face, apply to the Board. However, it can provide helpful guidance to the Board in determining an appropriate amount of compensation to award to Lapchuk as interest. Accordingly, the Board has determined that it would be appropriate to calculate the interest by averaging the interest rates in effect during the period from the day on which the loss or damage was first sustained to the day of this decision. Pre-judgment interest is properly added to all of the amounts awarded, including moral damages[61], in an amount of .96 percent. While the damage here was first sustained even prior to Lapchuk's termination, the Board has determined that it would be appropriate to grant interest commencing from the date of termination, October 28, 2013.

Moral damages:

[151] In *Coppola*, the Court found it to be an appropriate case for an award of moral damages, given the employer's breach of the duty of good faith and fair dealing it owed to its employee in his dismissal:

> *[27] In the employment context then, moral damages are available whenever the employer breaches the duty of good faith and fair dealing it owes to its employee in the dismissal of its employee (see Wallace, at para. 95). The duty requires employers to be "[c]andid, reasonable, honest, and forthright…" and further requires employers to "[r]efrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading, or unduly insensitive" when dismissing an employee (Wallace, at para. 98). If an employer should run afoul of these requirements, moral damages will likely follow.*

[152] In *Greater Toronto Airports*, the Court upheld the Arbitrator's decision that the grievor was entitled to damages for mental distress, though it sent the issue back to the Arbitrator to determine the appropriate amount; the Arbitrator had awarded $50,000 for mental distress and pain and suffering for a knee injury, and the Court found that an award of damages for pain and suffering

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[61] *Coppola*, paras 41-44.

from the knee injury was not supported by the evidence. With respect to the award for mental distress the Court said:

> *[110] The arbitrator set out in detail his reasons for finding bad faith on the part of the GTAA, for finding significant mental distress caused to a particularly vulnerable individual and for finding that the GTAA had knowledge of that vulnerability. In the circumstances of this case, his decision to award damages for mental distress based on the bad faith of the employer in the manner of dismissal fell within a range of reasonable outcomes.*

The facts in that decision are comparable to Lapchuk's situation. Lapchuk was a particularly vulnerable individual and the Union had knowledge of that vulnerability.

[153] In the Liability Decision, the Board found that the Union acted with complete disregard for or indifference to the consequences of their decisions. They acted in blatant and reckless disregard for the consequences to Lapchuk. Their course of conduct was so implausible, so summary and so reckless as to be unworthy of protection. They adopted an arbitrary, uncaring, reckless course of conduct that was a serious breach of the duty of fair representation they owed to Lapchuk. They acted in a manner that was grossly negligent, arbitrary and in bad faith.

[154] The Board finds that all of these determinations in the Liability Decision lead to a conclusion that this is an appropriate case in which to award moral damages.

[155] As noted in *Coppola*, medical evidence is not strictly necessary to found a claim for moral damages. However, in this matter there was direct medical evidence connecting the Union's acts and the compensable harm.

[156] The Board finds that the conduct of the Union in this matter was so egregious that an appropriate award of moral damages is $25,000, the top of the range identified in *Coppola*.

Compensation for delay:

[157] Lapchuk invited the Board to take into account not only the delay in the hearing of this matter, but the delay in the hearing of the grievance arbitration, in determining an appropriate amount of compensation for delay. The Board declines to do so. The delay in the arbitration hearing was instead factored into the determination that the Union breached its duty of fair representation.

[158] With respect to the issue of delay in the hearing of this matter, *Abrametz* confirmed that the first question for the Board is whether the delay was inordinate. This requires a consideration

of contextual factors including the nature and purpose of the proceedings, the length and causes of the delay and the complexity of the facts and issues. The approach adopted by both Lapchuk and the Union in this matter led to a complexity of facts and issues. The hearing in this matter was delayed by the COVID-19 pandemic and by Lapchuk's mental health issues. Setting aside those factors, which are not attributable to either party, the Board finds that the parties share responsibility for the length of time the hearing lasted. While the delay definitely caused Lapchuk significant prejudice, the Board is unable to find that the delay was inordinate, given the complexity of the facts and issues in this matter and the shared responsibility for the length of the hearing. Accordingly, the Board declines to order additional compensation for delay.

Punitive damages:

[159] Subsection 6-104(2) of the Act provides the Board with authority to require the payment of monetary loss suffered by Lapchuk. As the Board stated in the Liability Decision, remedies granted by the Board are to be compensatory, not punitive. The Board does not award damages for the purpose of retribution, deterrence or denunciation, but for the purpose of addressing the damages suffered by Lapchuk. In this matter, the Board is not satisfied that an award of punitive damages is required to properly compensate Lapchuk for the damage caused by the Union. The Board declines to order punitive damages.

Calculation of compensation for breach of duty of fair representation:

[160] In the absence of any comparable precedents for determining this loss, the Board has concluded that the arbitral decisions provide useful guidance. The loss to be compensated for is the loss of a capital asset; the Board has decided that the most accurate valuation of that asset is achieved based on the wages flowing from employment. The damages awarded reflect the value of the loss of employment and the value of the loss of the benefit of being protected by a collective agreement.

[161] *Malavolta* referred to two optional approaches for calculating compensation: fixed term approach and retirement allowance approach. The submissions of the parties indicate that Lapchuk is proposing the Board adopt the fixed term approach, while the Union is proposing that the Board adopt the retirement allowance approach.

[162] Using the fixed term approach, the Board would project how long Lapchuk would have remained in his job, which can be considered his projected date of retirement, and calculate his total wage loss from the date of termination to the date of retirement. Then, the Board would

deduct from that amount a discount for contingencies, such as the likelihood of demotion or discharge, layoffs, or discontinuance of employment due to illness or accident, or voluntary resignation for any other reason, and also deduct an amount based on the likelihood of his ability to mitigate his lost wages. Jocsak calculated this amount as $192,461[62].

[163] Using the retirement allowance approach, the Board would calculate damages based on a number of months per year of service with an additional amount, a top-up, to account for the loss of collective agreement benefits such as seniority, health and welfare and pension benefits. This amount is not subject to reduction based on mitigation, since it does not represent an ongoing loss of wages.

[164] The Board has determined that the fixed term approach is not available to use in this matter. First, given the Board's finding that it will not grant an income tax gross-up, Jocsak's Report does not provide a calculation that the Board can rely on in calculating damages:

> *The lump sum gross payment for loss of income and benefits provided in Table 1 and Table 2 is appropriate if Mr. Lapchuk is provided with a lump sum taxable payment to compensate him for his loss of income and benefits from termination to retirement (i.e. since lump sum damages for loss of income and benefits following a wrongful dismissal are generally considered taxable income by CRA). As a result, Mr. Lapchuk's past and future loss of income and benefits has been determined on an after-tax basis, with an after-tax discount rate, and an income tax gross-up is applied to compensate Mr. Lapchuk for the income tax payable on the lump sum award. If Mr. Lapchuk's award for loss of income and benefits is not taxable, the results in Table 1 and Table 2 will need to be re-calculated.* (emphasis in original)

[165] Second, the Jocsak Report calculates the value of his lost non-pension benefits at 7.5 percent. This amount only reflects benefits such as group life insurance and health and dental plans, but not non-cost benefits such as seniority and security.

[166] Instead, the Board has determined that using the retirement allowance approach will provide an appropriate calculation of damages.

[167] The Union suggested an appropriate calculation of Lapchuk's monthly salary for this purpose would be $56,574/26 pay periods is $2,175.93 x 2 = $4,351.85 per month. A more straightforward and accurate way to calculate his monthly salary would be $56,574/12 = $4,714.50.

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[62] Table 2: after-tax past loss of income and benefits with interest ($106,597) plus after-tax future loss of income and benefits ($85,864).

[168] The Union suggested that Lapchuk had 22 years of service. They filed a Seniority Roster[63] that listed Lapchuk's seniority date as August 5, 1991. Questions were raised about whether this date reflects all of Lapchuk's years of service, since he had a break in service. Hendriks testified that, when an employee has a break in service and then returns, after they are back in the Employer's employ for one year, their previous seniority is reinstated. However, Amor testified that whether the employee received credit for their previous years of service would have depended on what the collective agreement stated at the time they returned to the Employer's employ. The Union filed excerpts of three collective agreements[64] but none of them provided information respecting this issue. If the Board was to accept that Lapchuk's seniority date of August 5, 1991 reflects all of his years of service with the Employer, that would mean that he was employed with the Employer for just over 22 years (from August 5, 1991 to October 28, 2013). However, in the Final Argument and Brief of Law[65] submitted by the Union to the Arbitrator, the Union indicated "Mr. Lapchuk has twenty-five plus years of service". This is consistent with Lapchuk's evidence in this matter. Accordingly, the Board finds that Lapchuk had 25 years of service when his employment was terminated.

[169] Depending on the multipliers used, adopting the retirement allowance approach would result in an amount in the following range:

1 x $4,714.50 x 25 = $117,862.50 + 12% ($14,143.50) = $132,006

2 x $4,714.50 x 25 = $235,725 + 15% ($35,358.75) = $271,084

The Union suggested that an appropriate formula to apply in this matter would be one month's salary per year of service plus either a 12 or 15 percent top-up plus interest. Based on Hendriks' evidence the Union argued that 12 percent would be an appropriate top-up to compensate Lapchuk for the loss of pension contributions, health plan and dental plan.

[170] Some of the factors that arbitrators have mentioned as appropriate to be considered in determining the first multiplier include years of service, position lost, likeliness of obtaining similar unionized employment, age, education and employment prospects. All of these factors weigh in favour of a larger multiplier being appropriate in this case. Lapchuk was a long-term employee, having over 25 years of service. Although his Level 7 classification did not reflect it, he occupied

[63] Exhibit U105.
[64] Exhibits U55, U56 and U57.
[65] Exhibit A35.

a senior position with significant responsibility. Following his termination, there was an extremely low likelihood that he could obtain similar unionized employment. The evidence before the Arbitrator in the Appendices to the Union's Final Argument and Brief of Law indicated that Lapchuk was unable to find any other employment. The evidence in this matter indicates that, as a result of a number of factors, including the Union's conduct, Lapchuk has been unable to work at any time since his termination. Lapchuk's age and education also weigh against his employment prospects.

[171] The Union agrees that, in the grievance arbitration cases it relied on, there is a split among arbitrators whether conduct is to be considered in determining compensation in lieu of reinstatement. The Board has determined that a consideration of conduct would be inappropriate in this matter. The Board is not going to discriminate against Lapchuk on the basis of his disability. Medically compromised behaviour is not subject to censure.

[172] The Board finds that 1.5 months per year of service properly reflects Lapchuk's circumstances as outlined above. Further, given the size of the lost Employer pension contributions[66], an increased top-up amount is called for in this matter to properly compensate Lapchuk for all of his lost collective agreement benefits. This means that the following calculation would result in fair compensation to Lapchuk for the Union's breach of its duty of fair representation:

1.5 x $4,714.50 x 25 = $176,794 + 17 percent ($30,055) = $206,849

Conclusion:

[173] In summary, the Union shall pay to Lapchuk:

Damages for breach of duty of fair representation	$206,849
Legal expenses	$25,000
Out-of-pocket expenses	$12,761
Moral damages	$25,000
Pre-judgment interest from date of termination	$25,145
TOTAL	**$294,755**

[66] Calculated in the Jocsak Report as 7.5 percent of salary to October 2015, then 7.6 percent of salary to December 2019, then 8.6 percent of salary from January 2020.

[174] The Board thanks the parties for the thorough, detailed submissions they provided to assist the Board in making a determination. The Board has reviewed and considered all of them in coming to a decision in this matter.

DATED at Regina, Saskatchewan, this **17th** day of **February, 2023.**

LABOUR RELATIONS BOARD

Susan C. Amrud, K.C.
Chairperson