

CITATION: Brar v. ATU Local 113, 2026 ONSC 3441
DIVISIONAL COURT FILE NO.: 262/25
DATE: 20260615

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: AZADBIR BRAR, Applicant/Moving Party

AND:

ATU LOCAL 113, TORONTO TRANSIT COMMISSION, WILLIAM KAPLAN
AND THE ATTORNEY GENERAL OF ONTARIO, Respondents

BEFORE: Matheson J.

COUNSEL: *Satish Mandalagiri*, for the Applicant

Simon Blackstone, for the Respondent ATU Local 113

Steve Lavender, for the Respondent Toronto Transit Commission (TTC)

No other party appearing on the motion

HEARD: June 12, 2026, by video-conference

ENDORSEMENT

[1] By notice of motion dated April 3, 2025, Azadbir Brar seeks an extension of time to apply for judicial review of the decision of Arbitrator Kaplan dated September 27, 2023. The moving party requires a lengthy extension of time of about a year and a half. The respondents object.

[2] Section 5(1) of the *Judicial Review Procedure Act* requires that an application for judicial review be brought within 30 days of the decision at issue. Section 5(2) gives the court discretion to extend the time where there are apparent grounds for relief and no substantial prejudice or hardship will result. In that regard, the court may consider the length of the delay and any explanation offered for it: *Unifor v. Scepter*, 2022 ONSC 5682 (Div. Ct.).

[3] The moving party relies on the history of his labour dispute to justify his delay. Those circumstances arise from his termination from the respondent TTC in 2019. The respondent ATU Local 113 is the moving party's Union. The respondent William Kaplan was the arbitrator for the resulting grievance. The grievance proceeded to a hearing during which the TTC agreed to reinstate the moving party. The arbitration continued on the issue of compensation. Arbitrator

Kaplan awarded compensation of \$175,000, as well as reimbursement of certain expenses. The moving party was dissatisfied with the financial outcome but resumed work at the TTC.

[4] After obtaining legal advice, the Union declined to bring an application for judicial review from the above award. The Union notified the moving party of that decision in October 2023. At the moving party's request, the Union confirmed its position in writing by an email in February 2024.

[5] The moving party did not proceed with a late attempt to bring the judicial review. The moving party started an unfair labour practice complaint against the Union but withdrew it in December 2024. There was then another delay before this motion was submitted in April 2025.

[6] With respect to his delay, the moving party relies on his unfair labour practice complaint even though it was ultimately withdrawn. The moving party also relies on a request for his file from the Union in August 2024. At that time, there was a dialogue about which documents were available. That dialogue does not show that the request was a barrier to commencing an application for judicial review. And the moving party relies on a period of bedrest following surgery in August 2023, without providing supporting medical evidence and despite being able to bring the unfair labour practice complaint after that time. Although I have taken all of this into account, it is a weak explanation at best.

[7] Further, the delay here is long. In *Unifor*, an eight-month delay required a robust explanation. Here, the delay is almost eighteen months.

[8] Moving to the merits, the moving party would first need to overcome the law that provides that a unionized employee cannot seek judicial review of an arbitration award where the union decides not to, subject to exceptions that do not appear to apply here: see, *e.g.*, *Gilinsky v. Arbitrator Joseph D. Carrier*, 2012 ONSC 5497 (Div. Ct.). The moving party relies on the email from the Union confirming that it was not pursuing judicial review. That email said that the moving party was free to seek his own remedy. With respect to that email, the Union submits that when read in context, it referred to pursuing an unfair labour practice complaint, which is what the moving party did pursue.

[9] Even if the application was heard on the merits, the presumptive standard of review is reasonableness and there is considerable deference to an arbitrator in the labour relations context. Before this court, the moving party submits that the Arbitrator made legal errors in determining compensation. The moving party relies on principles from private employment law. The respondents dispute the characterization of and relevance of those cases and also note that to some extent the moving party seeks to challenge the Arbitrator's factual findings on the evidence. Further, there is no merit to an application as against the Arbitrator personally. Nor are the allegations of procedural unfairness persuasive.

[10] I am therefore doubtful that there are apparent grounds for relief. There is then the question of prejudice. Under s. 5(2) of the Act, the issue is whether substantial prejudice would result if the extension were granted. The lengthy delay here is sufficient to give rise to a presumption of prejudice to the respondents. Further, the importance of finality in labour relations is a significant

factor. I find that there would be substantial prejudice to the respondents if the extension is granted.

[11] Considering all the evidence and submissions in the exercise of my discretion, I decline the extension of time. The motion is dismissed. The moving party shall pay each of the TTC and the Union the agreed-upon amount of \$3,000 in costs, all inclusive.

Matheson J.

Date: June 15, 2026