

**Labour Relations Board
Saskatchewan**

TIMOTHY LALONDE, Applicant v. GORDON BOYCHUK, Respondent and UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1985 and INTERNATIONAL UNION OF OPERATING ENGINEERS, HOISTING, PORTABLE AND STATIONARY, LOCAL 870, Interested Parties

LRB File Nos. 098-05 & 099-05; May 17, 2007

TIMOTHY LALONDE, Applicant v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1985, Respondent

LRB File No. 100-05; May 17, 2007

Chairperson, James Seibel; Members: Joan White and Maurice Werezak

The Applicant:	Timothy Lalonde
For Gordon Boychuk and the United Brotherhood of Carpenters and Joiners of America, Local 1985:	Drew Plaxton
For the International Union of Operating Engineers, Hoisting, Portable and Stationary, Local 870:	No one appearing

Practice and procedure – Particulars – Where applicant made serious allegations of wrongdoing, declined to particularize allegations in response to Order requiring provision of particulars, offered no sufficient reason for failure/inability to adequately respond and did not seek extension, respondents cannot know case to meet – Board exercises discretion to dismiss applications for failure to provide particulars ordered.

Practice and procedure – Summary dismissal – Applications so vague that, if accepted as true, do not disclose case which respondents can prepare themselves to meet or answer – Respondents entitled to know case to be answered – Applicant given opportunity to improve application by providing particulars of allegations and failed to do so – Board cannot countenance trial by ambush – Board dismisses applications as they do not disclose arguable case.

Practice and procedure – Res judicata –Where issue of monetary loss raised in previous proceedings, applicant declined to seek monetary loss or adduce evidence of same and Board declined to make order for monetary loss, applicant estopped by res judicata from seeking to raise issue of compensation for monetary loss in present proceedings – Board dismisses present application for monetary loss.

Practice and procedure – Abuse of process – Where applicant declined to present evidence of monetary loss in previous proceedings without explanation, to allow applicant to raise issue in present proceedings would be to allow re-litigation of matter or litigation by installment – Board dismisses present application for monetary loss as abuse of process.

The Trade Union Act, ss. 5(d), (e) and (g), 11(2)(a), 12 and 18.

REASONS FOR DECISION

Background:

[1] In *Timothy Lalonde v. United Brotherhood of Carpenters and Joiners of America, Local 1985*, [2004] Sask. L.R.B.R. 244, LRB File No. 222-02 (hereinafter referred to as “*Lalonde 2004*”), the Board found that the United Brotherhood of Carpenters and Joiners of America, Local 1985 (the “UBCJA Local 1985”) committed unfair labour practices in violation of ss. 11(2)(a) and 36.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “*Act*”), in expelling the present Applicant, Timothy Lalonde, from membership pursuant to a constitutional ban on members of the UBCJA Local 1985 belonging to a competing union.

[2] Mr. Lalonde had taken out membership in the International Union of Operating Engineers, Hoisting, Portable & Stationary, Local 870 (the “IUOE Local 870”). While the Board found that there was no evidence of bad faith, malice or ill will on the part of the UBCJA Local 1985 or its officers, it was found that the UBCJA Local 1985 had violated the principles of natural justice in terms of the process it followed in expelling Mr. Lalonde from membership and that the expulsion itself constituted interference with the exercise by Mr. Lalonde of rights under the *Act* to belong to a second union. At the hearing Mr. Lalonde did not seek any remedy beyond reinstatement to membership in good standing with no loss of seniority – he expressly sought no recompense for monetary loss and presented no evidence of same (see, *Lalonde 2004, supra*, at 295).

[3] As a remedy, the Board ordered the UBCJA Local 1985 to “restore [Mr. Lalonde] to its membership without loss of seniority or benefits and to restore him to its work referral list as if he had not had his membership revoked.” The Board also ordered

that Mr. Lalonde was not required to pay union dues from the date he was expelled in 2002 to the date of the Order issued by the Board in *Lalonde 2004*.

[4] In LRB File No. 098-05, Mr. Lalonde applies to the Board pursuant to ss. 5, 11(2)(a) and 12 of the *Act* alleging that the Respondent, Gordon Boychuk, an officer of the IUOE Local 870 aided the UBCJA Local 1985 in committing the unfair labour practices dealt with in the application, hearing and decision in *Lalonde 2004, supra*. The application states, in paragraph 4, that the allegation of violation of the *Act*,

4. ...is based upon the following facts:

Gordon Boychuk aided the Carpenters Union Local 1985 in violating sections 11,2,A (sic) & 36.2 & 36.1 of The Trade Union Act. By supplying information he also interfered with my member [sic] in OE Local 870 and UBC Local 1985.

[5] In LRB File No. 099-05, Mr. Lalonde alleges that, as a result of Mr. Boychuk's actions in violation of the *Act*, Mr. Lalonde suffered a loss of wages and he seeks compensation for monetary loss pursuant to s. 5(g) of the *Act*.

[6] In LRB File No. 100-05, Mr. Lalonde seeks monetary loss against UBCJA Local 1985 pursuant to s. 5(g) of the *Act* for alleged loss of wages resulting from its violations of the *Act* as found in *Lalonde 2004, supra*.

[7] All three of the present applications (LRB File Nos. 098-05, 099-05 & 100-05) were filed on May 30, 2005.

[8] The applications were scheduled for hearing by the Board in the ordinary course for October 5, 2005. By letter to the Board dated September 4, 2005 Mr. Lalonde applied to adjourn the hearing of the applications *sine die*. By letter to the Board dated September 9, 2005 Mr. Plaxton, counsel on behalf of the Respondents, applied for an order requiring Mr. Lalonde to provide certain particulars of the applications prior to the hearing and provided notice that the Respondents would be seeking summary dismissal of the applications on the grounds that the applications do not disclose any violation of the *Act*, are an abuse of the Board's process and are barred as being *res judicata* or by issue estoppel.

[9] A conference call was held by the Executive Officer of the Board with Mr. Lalonde and Mr. Plaxton on September 30, 2005 to hear the applications for adjournment and particulars. The Executive Officer of the Board orally adjourned the hearing of the applications *sine die* and indicated that Mr. Lalonde would be required to provide certain particulars as would be specified further by the Executive Officer. By e-mail to the Board dated April 23, 2006 Mr. Lalonde requested that the Board schedule the applications for hearing. The hearing was scheduled in the ordinary course for September 22 and 25, 2006.

[10] By letter dated August 17, 2006 the Executive Officer of the Board ordered Mr. Lalonde to provide certain particulars of the applications to counsel for the Respondents by September 11, 2006. By facsimile message dated August 18, 2006 Mr. Lalonde purported to respond to the Order of the Executive Officer regarding particulars as follows:

Most of these questions are impossible to answer. The others I am not going to answer because the ...(illegible)... material may be misused as per case 222-02.

[11] By facsimile letter to the Board dated September 3, 2006 Mr. Lalonde purported to respond further to the Order to provide particulars. The letter contains many confused and outright shocking, but clearly irrelevant, statements. After editing with a view to including anything even remotely relevant to a response to the Order for particulars, it provides as follows:

My case against Gordon Boychuk will be from the time he started harassing me to today as he is still harassing me and interfering in my memberships in the Carpenter's Union as well as the Operating Engineers. It will also encompass his use of the Justice Dept. and his position as a Justice of the Peace to harass me and intimidate me. Mr. Boychuk has made threats to my self about my working over time at the Regina Co-op upgrader. He has created a hostile work environment to for me and has not been honest with any of his dealings with the union or the SLRB he has committed perjury and lied to the OE 870 executive Board on a number of occasions about me. He has also told members of the OE 870 and the Carpenters' union not to talk to me because I was "wired". ... He used the fact that I was a victim of a home invasion and an assault against me in letters to the unions, SLRB and Regina City Police. Mr. Boychuk has had me arrested and

charged with charges that never made it to court because they were "factious and malicious in nature" So in other words I will be going after quite a lot of things with Mr. Boychuk. I may have forgotten a few things but if I have it's not because of not wanting to let the counsel know but rather because I am not sure I can remember all of his insane actions at this time. ...

... Furthermore my request for evidence from the Carpenters Local 1985 has been denied. I can't answer the questions that have been asked of me because they won't give me the answers.

...

[12] By letter to the Board dated September 15, 2006 counsel for the Respondents objected that Mr. Lalonde's response to the Order for particulars did not comply with the Order and was inadequate and indicated that the Respondents would apply at the hearing for an order that the applications be dismissed.

[13] At the commencement of the hearing on September 22, 2006 Mr. Lalonde asked for an adjournment because he had just received some information from the Respondents and he was unable to deal with it on short notice -- in fact, the information he referred to came from the IUOE 870, which is not a party to these applications. The Board decided to hear the Respondents' application to dismiss the applications on the grounds that they disclose no cause of action, are an abuse of the Board's process, are barred as *res judicata* or by issue estoppel and due to Mr. Lalonde's failure to comply with the Order for particulars. The hearing of the applications proper was adjourned *sine die* pending decision by the Board on the preliminary application.

Representations of the Parties:

The Respondents

[14] Counsel on behalf of the Respondents argued that the applications ought to be dismissed on each of the grounds put forward on behalf of the Respondents.

[15] Firstly, counsel submitted that Mr. Lalonde's response to the Order to provide particulars was entirely insufficient and essentially constituted a deliberate refusal to comply. Accordingly, the applications ought to be dismissed.

[16] Secondly, counsel submitted that the application in LRB File No. 100-05 against the UBCJA Local 1985 ought to be dismissed on application of the doctrine of *res judicata*, in that the issues raised were decided as between the same parties in *Lalonde 2004, supra*. That is, in the application in LRB File No. 100-05, the compensation for monetary loss sought by Mr. Lalonde is alleged to be the direct result of the unfair labour practices found in *Lalonde 2004*; however, at the hearing of *Lalonde 2004*, Mr. Lalonde expressly stated that he was not seeking such compensation as a remedy. Counsel submitted that Mr. Lalonde ought not to be allowed to relitigate the matter. In support of this argument, counsel referred to *Garrant v. Garrant* (1984) 40 Sask. R. 158 (Sask. Q.B.), affirmed [1985] 6 W.W.R. 31 (Sask. C.A.).

[17] Thirdly, counsel submitted that the applications ought to be dismissed as an abuse of the Board's process as constituting what counsel described as "grandstanding" – that Mr. Lalonde is not interested in any real adjudication of the complaints, but seeks to mount personal attacks on Mr. Boychuk and the business manager of the UBCJA Local 1985, Bob Todd.

[18] Fourthly, counsel argued that none of the three present applications discloses an arguable case and should therefore be dismissed. The application in LRB File No. 098-05, even if the allegations are true, does not disclose a violation of the *Act* by Mr. Boychuk and, therefore, the application in LRB File No. 099-05 in respect of alleged monetary loss relating thereto should also be dismissed. The application in LRB File No. 100-05 in relation to the UBCJA Local 1985 is in respect of remedy for the breaches found in *Lalonde 2004*, which has already been granted by the Board.

[19] Finally, counsel argued that all three applications should be dismissed for undue delay. The Board's decision in *Lalonde 2004* was rendered in November 2004 and the present applications were not filed until May 2005.

The Applicant

[20] In his opportunity for argument Mr. Lalonde did not address the issues raised by the Respondents for dismissal of the applications. Instead, he asked to amend the application in LRB File No. 098-05 to reflect his assertion that his complaints against Mr. Boychuk were ongoing. He also stated that he wanted the panel to review the

decision by the Chairperson of the Board to decline to issue a subpoena requested by Mr. Lalonde requiring the attendance of Judge Seniuk of the Provincial Court to testify at the hearing.

Relevant Statutory Provisions:

[21] Relevant provisions of the Act include ss. 5(d), (e) and (g), 11(2)(a), 12, 18(a) and (p) and 42, which provide as follows:

5. *The board may make orders:*

(d) *determining whether an unfair labour practice or a violation of this Act is being or has been engaged in;*

(e) *requiring any person to do any of the following:*

(i) *to refrain from violations of this Act or from engaging in any unfair labour practice;*

...

(ii) *subject to section 5.1, to do any thing for the purpose of rectifying a violation of this Act, the regulations or a decision of the board;*

...

(g) *fixing and determining the monetary loss suffered by an employee, an employer or a trade union as a result of a violation of this Act, the regulations or a decision of the board by one or more persons, and requiring those persons to pay to that employee, employer or trade union the amount of the monetary loss or any portion of the monetary loss that the board considers to be appropriate;*

...

11(2) *It shall be an unfair labour practice for any employee, trade union or any other person:*

(a) *to interfere with, restrain, intimidate, threaten or coerce an employee with a view to encouraging or discouraging membership in or activity in or for a labour organization, but nothing in this Act precludes a person acting on behalf of a trade union from attempting to persuade an employer to make an agreement with that trade union to require as a condition of employment membership or maintenance of membership in the trade union or the selection of employees by or with the advice of*

a trade union or any other condition in regard to employment, if such trade union has been designated or selected by a majority of employees in an appropriate unit as their representative for the purpose of bargaining collectively;

12 No person shall take part in, aid, abet, counsel or procure any unfair labour practice or any violation of this Act.

...

18. The board has, for any matter before it, the power:

(a) to require any party to provide particulars before or during a hearing;

...

(p) to summarily dismiss a matter if there is a lack of evidence or no arguable case;

...

42. The board shall exercise such powers and perform such duties as are conferred or imposed on it by this Act, or as may be incidental to the attainment of the objects of this Act including, without limiting the generality of the foregoing, the making of orders requiring compliance with the provisions of this Act, with any regulations made under this Act or with any decision in respect of any matter before the board.

Analysis and Decision:

[22] In our opinion, each of the applications ought to be dismissed for a variety of reasons, which are not the same in each case.

LRB File Nos. 098-05 and 099-05

[23] In our opinion, the applications in LRB File Nos. 098-05 and 099-05 ought to be dismissed on the ground that the Applicant has failed to provide particulars as ordered or at all, and further and in the alternative, as disclosing no arguable case.

(a) Provision of Particulars

[24] Pursuant to s. 18(a) of the *Act*, the Board may require a party to provide particulars prior to a hearing. Pursuant to s. 4(12) of the *Act*, the Board has mandated the Executive Officer of the Board to exercise that function on his own, subject to the right to review the Executive Officer's decision by a panel of the Board.

[25] In our opinion, the response by Mr. Lalonde to the Order made by the Executive Officer requiring the provision of particulars to counsel for the Respondents is insufficient and inadequate. His letter of September 3, 2006 is essentially a tirade that does not adequately or reasonably answer the requirements of the Order. Indeed, it would appear to disclose that the evidence he intends to adduce at hearing will be largely irrelevant and highly prejudicial, vexatious, scandalous and embarrassing. While Mr. Lalonde's response may practically constitute a refusal to comply with the Order at all, it is not necessary that we so find in order to exercise our discretion to dismiss the application for failure to provide the particulars ordered.

[26] Mr. Lalonde offered no sufficient reason before or at the hearing as to why he failed or was unable to adequately respond, nor did he seek an extension of time to do so. While he stated that some of the required particulars were within the knowledge of the Respondents, he did not identify what those particulars were and did not, in any event, provide a rational response regarding any of the other particulars.

[27] Mr. Lalonde has made serious allegations of wrongdoing and declined to respond to the direction of the Board that these allegations be particularized. It cannot be fairly said that the Respondents know the case to be met in the absence of particulars.

[28] Accordingly, the applications in LRB File Nos. 098-05 and 099-05 are dismissed on this ground.

(b) No Arguable Case

[29] Pursuant to s. 18(p) of the *Act*, the Board may summarily dismiss an application if there is a lack of evidence or no arguable case. In the application in LRB

File No. 098-05 Mr. Lalonde alleges that Mr. Boychuk, violated ss. 11(2)(a) and 12 of the *Act* in aiding the UBCJA Local 1985 in committing unfair labour practices. The application states, in paragraph 4, that the relevant facts include the simple allegation that Mr. Boychuk “aided” the UBCJA Local 1985 in violating the *Act*, and, that “by supplying information [Mr. Boychuk] also interfered with my member [sic] in OE Local 870 and UBC Local 1985.”

[30] Paragraph 4 of the application in LRB File No. 098-05 does not identify how, when or in what way Mr. Boychuk aided the UBCJA Local 1985 in violating the *Act*. The first sentence of the statement of facts relied upon to found the allegation begs the question by merely stating that Mr. Boychuk did so; that is, it is merely a conclusion. The second sentence does not necessarily refer to the first because it is stated as being in addition to the first, but putting paragraph 4 in the best light, we have assumed that it does so refer. However, that is then the only fact relied upon by the Applicant. Obviously, it does not disclose the nature of the information alleged to be supplied, when it was supplied, to whom it was supplied or how it aided in the commission of unfair labour practices by the UBCJA Local 1985. In a sense, by ordering the provision of particulars of these allegations, the Board was providing the Applicant with the opportunity to improve the pleadings in order that an arguable case might be shown.

[31] In our opinion, as paragraph 4 of the application stands, it is so vague that, if accepted as true, it does not disclose a case which the Respondents can prepare themselves to meet or answer. In its decisions regarding unfair labour practice applications and whether to order the provision of particulars, the Board has emphasized that the allegations must be specific to a reasonable degree depending upon the situation. This is particularly important when one considers that unfair labour practices are quasi-criminal offences. A respondent is entitled to know reasonably the case to be answered. By failing to comply with the Order to provide particulars, Mr. Lalonde is the author of his own misfortune in this respect. We cannot countenance what would be a trial by ambush.

[32] Accordingly, the application in LRB File No. 098-05 is dismissed on the further and alternative ground that it does not disclose an arguable case. Because the

application in LRB File No. 099-05 is dependent upon success in LRB File No. 098-05, it is also dismissed.

LRB File No. 100-05

[33] In LRB File No. 100-05, Mr. Lalonde seeks compensation for alleged monetary loss against the UBCJA Local 1985 in respect to the breaches of the *Act* by the UBCJA Local 1985 found by the Board in *Lalonde 2004, supra*. Paragraph 6 of the application states as follows:

The union revoked my membership in violation of The Trade Union act and I suffered a loss of wages as a result.

[34] The UBCJA Local 1985 requests that the application be dismissed as a result of the application of the doctrines of *res judicata* and issue estoppel and on the ground that it is an abuse of process. Both bases focus on a common theme that the issues raised in the application have already been decided or should have properly been raised in the earlier proceeding.

[35] In Sopinka, Lederman and Bryant, *The Law of Evidence in Canada* (Markham: Butterworths Canada Ltd., 1992), the authors describe the constituent elements of estoppel by *res judicata* as follows at 990-91:

- (i) That the alleged decision was what in law is deemed such;
- (ii) That the particular decision relied upon was in fact pronounced;
- (iii) That the tribunal pronouncing the decision had competent jurisdiction;
- (iv) That the decision was final;
- (v) That the decision was, or involved, a determination of the same question as that sought to be controverted in the litigation in which the estoppel is raised;
- (vi) That the parties to the decision were the same parties as those in the previous proceeding.

[36] In the present case, in our opinion there is no question regarding any of these constituent elements, excepting perhaps whether the previous decision was, or

involved, a determination of the same question raised in the present case, on the basis that the Board did not award any compensation for monetary loss.

[37] In *Lalonde 2004*, the Board addressed and considered the issue of remedy for the violations of the *Act* by the UBCJA Local 1985 pursuant to its mandate to do so as stated in s. 5(e) of the *Act*. The Board ordered the UBCJA Local 1985 to cease violating the *Act*, to reinstate Mr. Lalonde to its membership without loss of seniority or benefits and to restore him to its work referral list as if he had not had his membership revoked, and declared that Mr. Lalonde was not obliged to pay union dues during the period that his membership was wrongfully revoked. (See, *Lalonde 2004, supra* at 295).

[38] At the hearing, although the issue of compensation for monetary loss was raised with Mr. Lalonde, he declined to adduce any evidence of same. At 295 of the Reasons for Decision in *Lalonde 2004*, the Board stated that, “The Applicant sought no recompense for monetary loss and presented no evidence of same.”

[39] In our opinion, the Board considered whether the remedy it would order would include compensation for monetary loss and, in the absence of any evidence of same, declined to make an order. Therefore, the Board considered the issue of compensation for monetary loss in the former proceeding and that is exactly what Mr. Lalonde seeks to have the Board hear and consider in the present proceeding.

[40] Accordingly, we find that the application in LRB File No. 100-05 ought to be dismissed in that the Applicant is estopped by *res judicata* from seeking to raise the issue of compensation for monetary loss.

[41] Further and in the alternative we find that the application should also be dismissed as an abuse of the Board’s process. Mr. Lalonde declined to present evidence of monetary loss at the previous proceeding. At the hearing in the present matter, he did not explain why he declined to do so. In the present circumstances, to allow Mr. Lalonde to raise the issue now would be to allow re-litigation of the matter or, at the least, to allow litigation by installment. While the Board is mindful that Board policy relating to matters of importance to the labour relations community should not be developed or determined by way of omission or through inadvertence of parties in not

raising necessary arguments, in *Lalonde 2004*, Mr. Lalonde specifically declined to present any case for compensation for monetary loss. In the circumstances of the present case, it is an abuse of process for him to seek to raise the issue now.

[42] Accordingly, further and in the alternative, the application in LRB File No. 100-05 ought to be dismissed as an abuse of process.

Order:

[43] An Order will issue that each of the applications in LRB File Nos. 098-05, 099-05 & 100-05 is dismissed.

DATED at Regina, Saskatchewan, this **17th** day of **May, 2007**.

LABOUR RELATIONS BOARD

James Seibel,
Chairperson