

**The Labour Relations Board  
Saskatchewan**

**ROBERT M. TAYLOR, Applicant v. SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION and GOVERNMENT OF SASKATCHEWAN, Respondents**

LRB File No. 053-10; March 23, 2011  
Vice-Chairperson, Steven D. Schiefner, sitting alone.

For the Applicant: Mr. Robert M. Taylor  
For the Respondent Union: Mr. Rick A. Engel, Q.C.  
For the Respondent Employer: No one appearing.

**Duty of Fair Representation – Delay - Applicant alleges Union failed to fairly represent him in grievance proceedings involving his employer – Applicant worked at Besnard Lake Correctional Facility until March of 2004 when he was involuntarily transferred to Prince Albert Correctional Centre for disciplinary reasons - Union files multiple grievances on behalf of Applicant but unsuccessful at arbitration in reversing transfer – Applicant works at new location until December of 2006 - Applicant refused to report for work – Employer terminated applicant’s employment in August of 2008 – Union files but abandons grievance related to Applicant’s termination – Applicant not disputing termination but arguing Union failed to fairly represent him with respect to involuntary transfer in 2004 – Board concludes matters now too old to form basis of proceedings before the Board - Board not satisfied that justice can be done by revisiting grievance proceedings that concluded over five (5) years prior to filing application with Board – Board dismisses application.**

***The Trade Union Act, s. 25.1***

**REASONS FOR DECISION**

**Background:**

**[1]** Steven D. Schiefner, Vice-Chairperson: The Saskatchewan Government and General Employees' Union (the "Union") is the exclusive bargaining agent for approximately 11,000 in-scope employees of the Government of Saskatchewan (the "Employer"). The Applicant, Mr. Robert (Mick) Taylor, was, at all times relevant to these proceedings, a member of the Union's bargaining unit and an employee of the Employer.

**[2]** On May 17, 2010, the Applicant filed an application with the Saskatchewan Labour Relations Board (the "Board") alleging that the Union failed to fairly represent him in

relations to grievance proceedings involving the Employer. The Union filed a Reply on May 31, 2010 denying the allegations. The Employer elected not to participate in these proceedings.

[3] The Applicant's application was heard by the Board on March 14, 2011, in Saskatoon, Saskatchewan.

[4] The Applicant testified on his own behalf and the Union elected to call no witnesses.

**Facts:**

[5] The facts relevant to these proceedings were not significantly in dispute and were well summarized by Arbitrator Frederick H. Cuddington in his March 4, 2005 decision in *Government of Saskatchewan (Saskatchewan Corrections & Public Safety v. Saskatchewan Government Employees' Union, Re: Grievances of Robert Taylor* at pages 1, 2 & 3:

*The grievor was employed as a Corrections Worker from 1988 to 2004 in the Besnard Lake Correctional Facility, a northern outdoor correction camp. This setting places staff in close proximity to the inmates in an outdoor facility. Mr. Taylor commenced employment as a casual Corrections Worker at the Besnard Lake Correction Camp in 1988. Approximately six weeks later he became a part-time employee. He was appointed to a term position and acted in a higher level capacity for various periods up until the events to be examined here. In October of 2000, the grievor became the Union shop steward and a member of the facility Occupational Health and Safety Committee.*

*His record of employment did not contain any disciplinary notations until these matters. The Employer took exception to the Union's statement that Mr. Taylor had a clear record of employment up until these issues, but did not rely on any prior instances of discipline in the disciplinary actions at issue here.*

*The Employer asserts that the grievor's conduct became inappropriate and unprofessional over time. Mr. Taylor asserts that he only started to experience difficulties with his superiors at the camp when he became the Union shop steward. The Employer stated that by May of 2001, the relationship between Mr. Taylor and his superiors had deteriorated very significantly. The Employer commenced disciplinary measures with escalating penalties in each. Mr. Taylor filed grievances in each instance and launched complaints of his own. By May of 2003 it was clear that the Camp Manager and Mr. Taylor understood that he would likely be terminated as a next step.*

*In May of 2003, in a disciplinary meeting, the grievor informed the Camp Manager that he was receiving assistance under the Employee and Family Assistance Program operated by the Saskatchewan Public Service Commission. He and the Union requested that any further contemplated disciplinary steps be held in abeyance pending a psychological assessment which might explain his actions. On July 10, 2003 an initial psychological assessment found that Mr.*

*Taylor had a severe learning disability and was unable to continue his duties. The Employer provided the grievor with an accommodation in an alternate position for a trial period commencing in November 2003. At its conclusion, Mr. Taylor and the Employer agreed that the accommodation was not successful. In January of 2004 the parties agreed that Mr. Taylor would be given another psychological assessment. On March 8, 2004 a subsequent assessment found him not to be disabled. He was immediately reassigned to the Prince Albert Correctional Centre. He has been performing well in his position there.*

**[6]** The Union filed multiple grievances on behalf of the Applicant. Of significance to these proceedings, the Union filed a grievance on April 22, 2004 asserting that the Applicant's discipline and transfer by the Employer from the correctional camp at Besnard Lake to the Prince Albert Correctional Centre was inappropriate and/or based on improper motives. The particular facts relevant to this grievance were also well summarized by Arbitrator Cuddington in his March 4, 2005 decision at pages 15, 16, and 17.

*A grievance #2004-073-028R was filed on April 22, 2004. The Union asserted that he had been disciplined and transferred for pointing out that racism was prevalent in the Camp at Besnard.*

*In a letter to Mr. Taylor date[d] April 28, 2004 the Director of Community Corrections reiterated the Employer's reasons for these steps. The Director stated that Mr. Taylor had called other staff members at the Besnard Camp racists and did so in conversations with inmates; this jeopardized co-workers safety and was not acceptable conduct for a Corrections Worker. Other staff members had made representations to management to have these matters dealt with or they would be commencing formal complaints. The Employer concluded that this inappropriate and unprofessional behavior made Mr. Taylor's continued employment at Besnard Camp untenable and that he required increased supervision which would be more readily available in the Prince Albert facility. The suspension was an escalation of the previous disciplinary actions.*

*The grievor argued that this discipline was a continuation of the malicious treatment he had received from management at the Besnard Camp. He asserted that just as he was victimized for raising O.H. & S. matters, he was victimized for raising these issues. While conceding that he "could have handled the situation better" he argued that the discipline was not justifiable. The Employer denied the grievance.*

*I have reviewed the contents of the notes taken by the Manager at the meeting of May 15, 2003. I have been provided with the written documentation regarding Mr. Taylor's statement both written and verbal and about other staff members. The Employer asserts that Mr. Taylor admitted or did not deny making the statements.*

*The Employer asserts that Mr. Taylor understood he had acted inappropriately. Mr. Taylor made a request to take into account that he was attending an EAP program. He made a request to be transferred. The Employer also argues that the grievor made a further request for an assessment by a psychologist so as to provide a basis for asserting that he was not responsible for his actions and therefore not culpable.*

*In relation to the investigations conducted regarding the O.H. & S. issues and harassment allegations, the reports recorded that there were instances of inappropriate smoking and inappropriate language. The reports indicate that steps were taken in order to remedy these situations. The Director of O.H. & S. considered these issues minor and noted that the circumstances were corrected. The investigator of the harassment allegations related to racism noted some use of inappropriate language and as well pointed out that the persons cited had been admonished. He found that the improprieties did not constitute harassment and had been corrected. The object of such complaints is to correct behavior, and that is what occurred.*

*There are no inaccuracies or omissions noted by the Union in relation to these investigations; no accusations of bias or anything untoward about the individuals conducting them. As stated previously, nothing new has been submitted in evidence that would support Mr. Taylor's assertions. These matters were dealt with in processes accepted by the parties, in forums which were determined to be legitimate by the grievor and the Union. It appears that the grievor has some considerable difficulty in accepting those results as the allegations continue despite the findings.*

*In these circumstances, I accept that the Employer had grounds to discipline Mr. Taylor and to discipline him in the form of transferring him to the Prince Albert Correctional Centre. In my opinion, it would have been and continues to be untenable for Mr. Taylor to return to the Besnard Corrections Camp given the circumstances. The Employer paid for his move to Prince Albert. He is doing well with the supervision provided in Prince Albert. It is my view that the Employer has not been unreasonable or unfair in this situation.*

*Again, in my assessment, allegations that the Camp Manager was a racist and was allowing or condoning racist conduct at the Camp, or was retaliating because Mr. Taylor was attempting to expose such conduct, is not consistent with the facts. These matters are very sensitive in this context and were examined by a mutually agreed investigator. No evidence has been provided to me in this process that would substantiate Mr. Taylor's claim. In my view it is troubling that such allegations, which have been subject to investigations and not sustained, continue to be relied upon.*

[7] In his March 4, 2005 award, Arbitrator Cuddington dismissed the Union's grievance with respect to the Applicant's discipline and transfer to Prince Albert. In so doing, Arbitrator Cuddington came to the following conclusions, noted at page 17 of his Award:

*The Employer had grounds for discipline in all cases. I do not accept that Mr. Taylor was the victim of discriminatory treatment as a result of his various capacities in the Union. Further, I do not accept that he was discriminated against for raising issues related to the operation of a safe and healthy workplace. I do not accept that he was the victim of reprisals as a result of concerns he raised about racism in the Besnard Camp.*

*Having concluded that the Employer had grounds for disciplining Mr. Taylor, I turn to the question of penalty. In general, the penalties were reasonable and suitable to the offenses. The suspensions and the transfer of Mr. Taylor to the*

*Prince Albert Correctional Center were reasonable and warranted. I also note that I have been told by the parties that all agreed that his conduct at the Prince Albert Centre has been without incident and that indeed he is performing well. In my view it is time for all to move on.*

[8] Following the determination of Arbitrator Cuddington, the Applicant continued working at the Prince Albert Correctional Centre until December of 2006, when the Union staged a legal strike action. At the conclusion of the Union's strike action, the Applicant failed to return to work. The Applicant was unresponsive to repeated requests by the Employer for the Applicant to return to work; requests that included cautions that, if he failed to return to work by August 1, 2008, he would be deemed by the Employer to have abandoned his position and his employment would be terminated. The Applicant did not return to work as directed and his employment was terminated by the Employer on or about August 8, 2008.

[9] Although the Union filed a grievance contesting the Applicant's termination, following an internal review by the Union; which review included advice from the Union's legal counsel and an opportunity for the Applicant to make representations, the Union's Screening Committee resolved to withdraw the Applicant's dismissal grievance on September 29, 2009. The Applicant appealed that decision to the Union's Provincial Grievance Committee, who ruled on February 17, 2010 that it agreed with the decision to withdraw the Applicant's termination grievance on the basis that the Union was unlikely to be successful in prosecuting the grievance.

[10] As indicated, the Applicant filed his application alleging the Union failed to its duty to represent him on May 17, 2010. Of particular significance, the Applicant was not alleging that the Union failed to fairly represent him with respect to his dismissal grievance. Rather, the Applicant alleged the Union failed to fairly represent him with respect to the grievance proceedings arising as a result of his involuntary transfer from the Besnard Lake Correctional Facility to the Prince Albert Correctional Centre in March of 2004; proceedings that went to arbitration in January of 2005 and were the subject of Arbitrator Cuddington's March 4, 2005 Award.

**Argument of the Parties:**

[11] The Applicant forcefully argued that he should not have been transferred by the Employer from his position at the Besnard Lake Correctional Facility in 2004. The Applicant advanced three (3) primary arguments in support of his position. Firstly, the Applicant argued that he had seniority and, thus, if there was a conflict at the Besnard camp, the less senior

employees should have been transferred to another location. Secondly, the Applicant advanced a number of allegations with respect to the misconduct of others at the correctional camps where he had worked (including allegations of systemic racism and repeated occupational health and safety violations) in support of his argument that he was transferred by the Employer for reasons other than his own misconduct. Thirdly, the Applicant argued that he suffered from “*geographic location stress disorder*” and that he could not function well in the more populated setting of Prince Albert.

**[12]** The Applicant argued that the Union was negligent in the conduct of his grievance proceedings in that the Union should have called additional witnesses to testify in support of his grievances. The Applicant also complained that the person assigned by the Union to assist him with his grievances was located in Regina and not Prince Albert, thus limiting his access to his representative. The Applicant also complained that the Union’s Executive Director would not return his emails.

**[13]** The Applicant alleged that he had suffered monetary loss as a result of the failings of the Union (i.e. the failure of the Union to reverse his involuntary transfer to Prince Albert) and he sought compensation for lost wages and other benefits.

**[14]** The Union argued that it fully represented the Applicant in all his dealings with the Employer. The Union noted that it filed and prosecuted multiple grievances on behalf of the Applicant, including a specific grievance dealing with his transfer in 2004. The Union noted that it advanced the Applicant’s grievances through mediation to arbitration but that it was ultimately unsuccessful.

**[15]** Counsel for the Union noted that Arbitrator Cuddington specifically found that the Employer’s decision to discipline and transfer the Applicant was “*reasonable and warranted*”. In particular, Arbitrator Cuddington found “*it would have been and continues to be untenable for Mr. Taylor to return to the Besnard Corrections Camp given the circumstances.*” Counsel argued that the only way the Union could have challenged the decision of Arbitrator Cuddington would have been through an application for judicial review and that there was no reasonable basis to conclude that the Union would have been successful in such an application for a number of reasons. Firstly, it was now too late to commence judicial review proceedings as it had been over six (6) years since the Arbitrator’s award. Secondly, the Applicant complied with the Award

until December of 2006, well beyond any reasonable period within which to bring a judicial review application. Because of his compliance, both the Employer and the Union reasonably concluded that the matters had been settled. Finally, the Union took the position that there was no substantive basis upon which to challenge Arbitrator Cuddington's Award. In the Union's opinion, Arbitrator Cuddington's Award was clear, comprehensive and fully responsive to the arguments advanced by the Union during the hearing.

[16] The Union asked that the Applicant's application be dismissed.

**Relevant Statutory Provisions:**

[17] The relevant provisions of *The Trade Union Act* are as follows:

*25.1 Every employee has the right to be fairly represented in grievance or rights arbitration proceedings under a collective bargaining agreement by the trade union certified to represent his bargaining unit in a manner that is not arbitrary, discriminatory or in bad faith.*

**Analysis:**

[18] In the Board's opinion, the Applicant's application must be dismissed.

[19] In this Board's decision in *Garnet Dishaw v. Canadian Office and Professional Employees Union, Local 397*, (2009) CanLII 507, LRB File No. 164-08, the Board noted that the authors of *The Trade Union Act* signaled an intention that time is of the essence in dealing with disputes in a labour relations context and that the timely commencement and resolution of outstanding grievances is an important component in maintaining amicable labour relations in the Province. Simply put, the Board concluded that parties have the right to expect that claims, which are not asserted within a reasonable period of time, or which involve matters that appear to have been satisfactorily settled (because of the effluxion of time), will not later re-emerge. In this case, the Board concluded that a twenty-three (23) month delay in bringing alleged violations of the *Act* before the Board was excessive and that the Board was not satisfied that justice could be done in hearing that application because of that delay.

[20] In the present circumstance, the Board is inescapably drawn to the conclusion that too much delay had occurred for this Board to subject the Union's conduct in handling and prosecuting the Applicant's 2004 discipline and transfer grievance to the scrutiny of the *Act*. The

events relevant to the Applicant's discipline and transfer grievance are far too old to now form the basis of a violation of s.25.1. The Applicant filed his application with the Board over five (5) years after these grievance proceedings were concluded before an arbitrator. In light of the Applicant's acquiescence to Arbitrator Cuddington's Award for over twenty (20) months, both the Union and the Employer had the right to expect that the Applicant's discipline and transfer grievance was satisfactorily settled by the Arbitrator Cuddington's Award.

**[21]** In my opinion, neither the Applicant's subsequent termination nor the processing of a new grievance by the Union (related to his termination) brought any new life back into the Applicant's old complaints regarding the validity of his involuntary transfer to the Prince Albert Correctional Centre in 2004 and/or the Union's conduct in prosecuting grievance proceedings on his behalf. These are distinct and separate matters.

**[22]** Even if the Applicant's complaints regarding the handling of his discipline and transfer grievances were not too old to now be considered by the Board, I saw no evidence that the Union's conduct in representing the Applicant in his 2004 was arbitrary, discriminatory or in bad faith. Now with the benefit of hindsight, the Applicant believes that the Union failed him in its handling of his past grievances. However, a review of the available evidence would indicate that the Union's representation of the Applicant was appropriate and his grievances were prosecuted in a fulsome and responsive manner. The Applicant appeared to be taking the position that the Union was negligent in its representation of him because it was unable to achieve the goals that the Applicant desired in dealing with the Employer; namely his return to the Besnard Lake Correctional Facility. As this Board stated in *D.M. v. Canadian Union of Public Employees, et. al.*, (2009) CanLII 2049, LRB File No. 110-08 & 157-08 at para 103:

*"The exclusive right to represent a unit of employees brings with it many responsibilities for a trade union, but guaranteeing the desired outcome of each individual member in his/her dealings with the employer is not one of these responsibilities."* (Emphasis added)

**[23]** None of the Applicant's arguments in support of his position, including his arguments with respect to "his seniority", "the misconduct by others", and "geographic location stress disorder" advanced, in any meaningful way, his allegation that the Union had violated s. 25.1 of the *Act* in representing him in his grievance proceedings. His seniority would have been

known to the Union at the time of the arbitration proceedings. As this Board noted in *J.K. v. Canadian Auto Workers, Local 4209 and Delta Bessborough Hotel*, [2010] CanLII 44856, LRB File No. 113-09, the fact that an employee has seniority in a trade union does not mean that he/she will not be subject to discipline by his Employer for misconduct. Furthermore, the allegations with respect to misconduct by others that the Applicant now asserts were before Arbitrator Cuddington and were discredited. Finally, while the Applicant argued that he suffered from “geographic location stress disorder”, he tendered no evidence as to such a disorder.

**[24]** With respect to the Applicant’s complaint that the Union should have called more or different witnesses, this Board has previously stated that we will not, with the benefit of hindsight, sit “on appeal” of a trade union’s decision on how it conducts its arbitrations, including which witnesses should have been called, and/or what evidence should have been tendered and/or what arguments should have been advanced or abandoned, as the case may be. See: *Hildebaugh v. Saskatchewan Government and General Employees’ Union and Saskatchewan Institute of Applied Science and Technology*, [2003] Sask. L.R.B.R. 272, LRB File No. 097-02; *Sheldon Mercer v. Communication, Energy and Paperworkers Union, Local 922 and PSC Mining LTD*, [2003] Sask. L.R.B.R. 458, LRB File No. 007-02; and *D.M. v. Canadian Union of Public Employees, supra*.

**[25]** In his 2005 Award, Arbitrator Cuddington encouraged the Applicant to “*move on*”. In his evidence before the Board, the Applicant repeated a number of allegations involving the management and his coworkers at the Besnard Lake Correctional Facility; allegations that were before Arbitrator Cuddington; allegations that Arbitrator Cuddington concluded were unfounded at that time. While the Applicant may have difficulty accepting these findings, the evidence before the Board supported the logical conclusion that the Applicant was involuntarily transferred by the Employer in 2004 for disciplinary reasons related to his own misconduct. To which end, it would appear that the Applicant was the author of his own misfortune. The Board saw no compelling evidence that the Employer’s actions were other than for good and valid reason or that the Union failed to fairly represent him in any of his dealings with the Employer. In this regard, I endorse and repeat the suggestion of Arbitrator Cuddington that it is time for the Applicant to move on.

**Conclusion:**

**[26]** For the foregoing reasons, the Applicant's application shall be dismissed.

**DATED** at Regina, Saskatchewan, this **23rd** day of **March, 2011**.

**LABOUR RELATIONS BOARD**

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Steven D. Schiefner,  
Vice-Chairperson