The Labour Relations Board
Saskatchewan

DWIGHT STINSON and ROBERT D. MCMILLAN, Applicants v. TEAMSTERS LOCAL UNION NO. 395, Respondent

LRB File Nos. 116-12 & 119-12; September 17, 2012
Vice-Chairperson, Steven Schiefner; Members: Mr. John McCormick and Mr. Ken Ahl

For Mr. Stinson:	No one appearing.
For Mr. McMillan:	Himself and Mr. Warren McNaughten
For the Teamsters:	Mr. Rick Engel, Q.C.

Duty of Fair Representation - Applicants believe that trade union erred in administration of its dispatch rules and file applications with Board citing violation of s. 25.1 of The Trade Union Act – Union, by way of preliminary motion, asks Board to summarily dismiss both applications on basis that essential character of dispute between parties falls outside jurisdiction of Board - Board satisfied that essential character of dispute involves internal union affairs and does not involve either a grievance or rights arbitration proceedings – Board concludes that neither application engages Board's jurisdiction pursuant to s. 25.1 – Board granting application for summary dismissal and dismissing Applicants' applications.

Union – Internal Union Affairs – Applicants believe that trade union erred in administration of its dispatch rules and file applications with Board citing violation of s. 36.1 of The Trade Union Act – Union, by way of preliminary motion, asks Board to summarily dismiss both applications on basis that essential character of dispute does not fall within jurisdiction of Board - Board noting that supervisory jurisdiction of Board with respect to internal union affairs is limited to disputes that arise out of trade union's Constitution and which involve an employee's membership therein or discipline thereunder – Board satisfied that essential character of dispute involve application and administration of union's dispatch rules and not its Constitution – Board concludes that applications do not fall within its supervisory jurisdiction pursuant to s. 36.1 – Board granting application for summary dismissal and dismissing Applicants' applications.

The Trade Union Act, ss. 18(o), 25.1 & 36.1

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson**: The Applicants, Mr. Dwight Stinson and Mr. Robert D. McMillan, are members of the Teamsters Local Union, No 395 (hereinafter the

"Union"). Both Applicants filed applications with the Saskatchewan Labour Relations Board (the "Board") alleging violations of ss. 25.1 and 36.1 of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "*Act*"). These applications are essentially the same and relate to the same series of events involving the two (2) Applicants. The essence of the allegations contained in these applications is that the Union erred in the interpretation and application of its own dispatch rules following the return of the Applicants from a dispatch in the summer of 2010 to an employer by the name of Robert B. Somerville Co. Ltd. (the "Employer").

[2] By way of preliminary motion, the Union asked this Board to summarily dismiss both of these applications on the basis that neither engages the jurisdiction of the Board as defined in ss. 25.1 and 36.1 of the *Act*. The Union's preliminary motion was heard by the Board on August 24, 2012, in Regina, Saskatchewan.

[3] Having considered the argument of the parties, we have concluded that the essential character of the matters in issue between the parties does not fall within the jurisdiction of this Board. Firstly, we find that the matters in issue between the parties do not engage s. 25.1 of the *Act*. Secondly, we also find that the matters in issue are outside the limits of the jurisdiction delegated to this Board pursuant to s. 36.1. Although both parties expressed the preference for this Board to hear and determine their dispute, we found ourselves bound by the decision of the Saskatchewan Court of Appeal in *Rodney McNairn v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 179*, (2004), 240 D.L.R. (4th) 358, 2004 SKCA 57 (CanLII).

Facts:

[4] For the purposes of the Union's motion, we have relied upon the facts as plead by Mr. McMillan in his application. For the most part, the relevant facts were not in dispute and were essentially the same for both applications.

[5] On or about July 12, 2010, the Applicants received a call-out from the Union to be dispatched to perform pipeline work near Outlook, Saskatchewan, for the Employer. Both Applicants accepted the call-out, made suitable arrangements for accommodation near the Employer's marshalling site, and reported for work on July 19, 2010. Unfortunately, the weather did not cooperate with these plans and both Applicants were laid off the next day by the

Employer because of poor weather and ground conditions. Understandably disappointed and maybe a little frustrated, both Applicants returned home.

[6] On July 26, 2010, the Applicants attended to the Union's office to enquire why they had not yet received their Record of Employment from the Employer for the two (2) days they worked. The Applicants spoke with the Union's Business Agent, Mr. Randy Powers. During their conversations with Mr. Powers, the Applicants advised the Union that they would not be returning to work for the Employer. While there was a dispute between the parties as to the exact nature of these conversations and whether the layoff that the Applicants had received from the Employer was temporary or not, there was no dispute that the Union advised the Applicants that it understood the layoffs were only temporary; that the Union understood the Employer intended to recall the Applicants; and that a refusal by the Applicants to go back to work for the Employer, if recalled, would place them in contravention of the Union's dispatch rules[1] triggering a ninety (90) day suspension from the Union's dispatch board and requiring the Applicants to personally re-register, thereby placing them at the bottom of the call-out rotation.

[7] On August 10, 2010, the Union wrote to each of the Applicants advising them of their suspensions because of their refusal to honour recall notices from the Employer. The suspensions were to commence on July 26, 2010 and terminate on October 23, 2010, whereupon the Applicants would have been eligible to re-register for the Union's dispatch board. The Applicants were also advised by the Union of their right to appeal their suspensions to the Union's Executive Board.

[8] Simply put, the Union treated the Applicants' declarations that they did not intend to return to work for the Employer as "quitting an employer" within the meaning of the Union's dispatch rules. The Applicants believe the Union erred in doing so and sought to appeal the Union's decision. The Applicants pursued appeals of the Union's application and/or interpretation of its dispatch rules through the Union's internal appeal processes. For example, the Union's Executive Board heard an appeal by the Applicants on October 8, 2010. At which time, the Applicants presented evidence and argument as to how they believed the Union erred in the application and/or interpretation of its dispatch rules. Their appeals were both denied on October 20, 2010, whereupon the Applicants were advised of their right to further appeal the

---

[1] The "Pipeline Construction and Construction Division Dispatch Rules", adopted by Teamsters Local Union No. 395 on December 12, 2003 (amended September 30, 2005).

Union's decision to the Executive of the Teamsters Joint Council No. 90. The Applicants did so and the Executive of the Teamsters Joint Council No. 90 heard an appeal by the Applicants on May 24, 2011. This appeal too was dismissed, with reasons, on July 20, 2011.

[9] On July 3, 2012, the Applicants filed their respective applications with this Board. By way of remedy, the Applicants seek an apology from the Union and to be restored to their respective positions on the Union's dispatch board.

Argument of the Parties:

[10] The Union took the position that the within applications do not invoke the jurisdiction of this Board. Relying on the decision of the Saskatchewan Court of Appeal in *McNairn*, *supra*, the Union urged this Board to examine the "essential character" of the dispute between the parties and to do so without regard to labels or the manner in which the legal issues have been framed by the Applicants.

[11] The Union argued that an examination of the "essential character" of the Applicants' dispute with the Union will reveal that it does not engage s. 25.1 of the *Act* because the Applicants believe that the Union erred in the application and/or interpretation of its dispatch rules; which is a purely internal union matter wholly unrelated to any dispute with the Employer or, more importantly, the interpretation and/or application of the Union's collective agreement with the Employer. The Union relied upon the decision of the Saskatchewan Court of Queen's Bench in *Taylor v. Saskatoon Civic Employees' Union Local 59*, 2007 SKQB 367 (CanLII) as standing for the proposition that s. 25.1 cannot be interpreted to provide an avenue for the Applicants to appeal from union business unrelated to disputes with an employer. See also: *Aijaz Shah v. International Brotherhood of Electrical Workers, Local 529 & BFI Contractors Ltd.*, 2010 CanLII 81338, LRB File No. 007-10.

[12] Furthermore, the Union argued that an examination of the "essential character" of the Applicants' dispute with the Union will also reveal that it falls outside the jurisdictional limits of s. 36.1 of the *Act*. While Counsel for the Union opined[2] that this Board would be the preferred

[2] Counsel noted that prior to the introduction of s. 25.1 and 36.1 to *The Trade Union Act* in 1983 this Board was loath to intercede or become involved in any internal disputes of a trade union. However, with the introduction of these provisions to the *Act* in 1983, this Board was granted exclusive jurisdiction to hear and determine certain types or classes of internal union disputes. Counsel suggested that the Union would prefer to have this class or type of dispute also heard and determined by this Board noting that the only alternative for the Applicants to have their

forum for resolution of disputes of the nature alleged by the Applicants, Counsel took the position that the decision of the Saskatchewan Court of Appeal in *McNairn, supra*, clarified that the jurisdiction of this Board pursuant to s. 36.1 is limited to only those internal disputes involve the Constitution of a trade union and a member's membership therein or discipline thereunder. Counsel noted that the circumstances of the present case are very similar to the facts that were before the Court in *McNairn, supra*, wherein the Court concluded a dispute regarding the application and/or interpretation of the dispatch rules of a Local of the Pipefitters' Union did not involve the Constitution of that trade union and thus did not fall within the jurisdiction of this Board. Council noted that, while this Board had been granted supervisory jurisdiction over certain type of internal union disputes, this Board has not been granted jurisdiction over all internal union disputes. The Union took the position that the "essential character" of the Applicants' dispute with the Union does not fall within the jurisdiction of this Board and thus it would be an error of law for us to entertain the Applicants' applications, irrespective of whether or not the parties wanted us to.

[13] For these reasons, the Union asked this Board to dismiss the Applicants' applications.

[14] On the other hand, the Applicants argued that this Board was the correct forum to hear their dispute with the Union. The Applicants took the position that they were "disciplined" by the Union and that s. 36.1 of the *Act* is the means by which members of trade unions (who have been disciplined) may seek to have such decisions reviewed. Furthermore, the Applicants argued that their dispute with the Union does involve its Constitution because all internal bylaws and rules of a trade union must flow from its Constitution. In essence, the Applicants took the position that the distinction by the Court of Appeal in *McNairn, supra*, between discipline flowing from a trade union's Constitution and its internal bylaws and/or rules was an error. In the alternative, the Applicant's asked this Board to distinguish or limit the *McNairn* decision to the particular facts therein.

[15] Simply put, the Applicants asked this Board to interpret s. 36.1 of the *Act* broadly such that it applies to all forms of discipline imposed by a trade union on a member. In doing so, the Applicants argued that this Board should import much of our jurisprudence from s. 25.1 of the

---

disputes adjudicated is for them to bring an application in the Court of Queen's Bench. Simply put, Counsel stated the Union's preference that, if this Board is to be granted jurisdiction to hear some internal union disputes, it would prefer that we heard them all.

Act into our interpretation of s. 36.1, including a duty on this Board to ensure that trade unions do not act arbitrary, discriminatory or in bad faith in the administration and interpretation of its internal bylaws and rules, including its dispatch rules.

[16] The Applicants asked that their applications not be dismissed and sought to have their dispute with the Union heard and determined by this Board.

Relevant Statutory Provisions:

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

> *18 The board has, for any matter before it, the power:*
> *(o) to summarily refuse to hear a matter that is not within the jurisdiction of the board;*
>
> *. . .*
>
> *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.*
>
> *. . .*
>
> *36.1(1) Every employee has a right to the application of the principles of natural justice in respect of all disputes between the employee and the trade union certified to represent his bargaining unit relating to matters in the constitution of the trade union and the employee's membership therein or discipline thereunder.*
> *(2) Every employee shall be given reasonable notice of union meetings at which he is entitled to attend.*
> *(3) No employee shall unreasonably be denied membership in a trade union.*

Analysis:

[18] As was noted by the Saskatchewan Court of Appeal in *McNairn, supra*, the appropriate forum for litigating disputes between a member and his/her trade union is divided between this Board and the courts. This Board has jurisdiction in those areas that have been expressly delegated by legislation; including and in particular, the provisions of *The Trade Union Act* of Saskatchewan. The jurisdiction of the courts is the residual consequence of the limits of the authority delegation to this Board. In those areas where jurisdiction has been delegated to this Board, it is to the implied exclusion of the courts. In other words, in those areas where the legislature has delegated matters to this Board, the courts lack jurisdiction or are restrained from

exercising it. On the other hand, we lack jurisdiction in those areas that have not been expressly addressed in legislation.

[19] As was also noted by the Court of Appeal in *McNairn*, *supra*, sometimes it can be difficult to tell where the jurisdiction of this Board ends and the jurisdiction of the courts begin. In applications such as this, where the jurisdiction of this Board is at issue, we have been instructed to examine the "essential character" of a dispute without overly concerning ourselves with the labels or the manner in which the legal issues have been framed by the parties. In short, we are instructed to disregard the "packaging" and examine the real issue(s) in dispute between the parties based on the facts surrounding it. With this in mind, we will examine each of the Applicants' complaints.

Complaint under s. 25.1:

[20] As noted in *McNairn, supra*, for this Board to assume jurisdiction over a dispute pursuant to s. 25.1, the "essential character" of a dispute must fall within the express language of that section. However, it is clear from the pleadings that the essential character of the Applicants' dispute with the Union does not involve a grievance proceeding or rights arbitration process or an allegation on the part of the Applicants that the Union failed to fairly represent them in relation to such a process. As this Board stated in *Shah, supra*, for this Board to have jurisdiction under s. 25.1, there must be a process (grievance or rights arbitration) in respect of which a trade union is alleged to have failed to represent a member. The Applicants' own pleadings, together with the remedy they seek, clearly established that their dispute with the Union does not engage this Board's supervisory jurisdiction, as set forth in s. 25.1.

Complaint under s. 36.1:

[21] While the result if the same, our findings regarding the Applicants' s. 36.1 complaints warrant a little deeper analysis.

[22] It is clear from the *McNairn* decision that, while we have been delegated jurisdiction over certain types of internal disputes within trade unions, we have not been delegated supervisory jurisdiction over them all. In the *McNairn* case, *supra,* it was argued before the Court of Appeal that s. 36.1 of the *Act* should be interpreted as granting broad supervisory jurisdiction to the Board regarding internal union disputes, as was found by

Hrabinsky J. of the Court of Queen's Bench[3]. However, Cameron J.A. speaking on behalf of the Court of Appeal found otherwise:

> *[37] In significant part, the purpose of* [section 36.1] *lies in protecting a member of a union from abuse in the exercise of the power conferred on unions by the preceeding section—section 36—and in particular subsections (4) and (5) thereof. These subsections empower a union to fine any of its members who has worked for a struck employer during a strike, provided the constitution of the union made allowance for this before the strike occurred. The purpose also lies in protecting an employee, employed in a unionized shop and required to maintain union membership as a condition of employment, not to be deprived of membership by the union except, according to subsection (3), for failure to pay the dues, assessments, and initiation fees uniformly required of all members.*
>
> *[38] Thus subsection 36.1(1) imposes a duty upon a union (again correlative to the right thereby conferred upon an employee), to abide by the principles of natural justice in disputes between the union and the employee involving the constitution of the trade union and the employee's membership therein or discipline thereunder. As such, the subsection embraces what may be characterized as "internal disputes" between a union and an employee belonging to the union, but it does not embrace all manner of internal dispute. For the subsection to apply, the dispute must encompass the constitution of the union and employee's membership therein or discipline thereunder. And when it does apply, it requires that the principles of natural justice be brought to bear in the resolution of the dispute.*
>
> *[39] Seen in this light, and in light of the allegations of fact made in the statement of claim, subsection 36.1(1) has no effective bearing on the essential character of the dispute between the parties. The Union is not alleged to have breached the duty imposed upon it by this subsection, and nothing material to the action and its determination turns on this duty. The Union's duty to place the names of its unemployed members on the unemployment board in prescribed sequence, which lies at the heart of the dispute posited by the statement of claim, is not to be found in subsection 36.1(1) of The Trade Union Act but in Article 11(d) of the Union's Working Rules and Bylaws. And on the facts of the matter, the complaint is not about Mr. McNairn having been deprived of natural justice by the Union, contrary to section 36.1(1) of the Act. It is about his having been deprived of work, for which he was qualified, because the Union, contrary to Article 11(d) of Working Rules and Bylaws, moved his name to the bottom of the unemployed board following his job-related experience at Burstall.*
>
> *[40] Nor, having regard for the facts alleged in the statement of claim, is the dispute about whether the Union failed to give Mr. McNairn reasonable notice of a meeting, as required by subsection 36.1(2), or unreasonably denied him membership in the Union, contrary to subsection 36.1(3).*

[23] As was the case in *McNairn, supra*, it is apparent from Applicants' own pleadings that their dispute lies in the Union's application and/or interpretation of its internal dispatch

---

[3] *Rodney McNairn v. United Association of Journeymen and Apprentices of the Plumbing and PipeFitting Industry of the United States and Canada, Local 179*, 2003 SKQB 328 (CanLII), Q.B.G No. 148 of 2003.

rules[4]. We are also satisfied, as was the Court of Appeal in *McNairn, supra*, that the Union's dispatch rules do not form part of the Union's Constitution. In this respect, the facts of the present applications are strikingly similar to the facts in the *McNairn* decision. An examination of the Applicants' pleadings, including the remedy they seek, reveals that the essential character of the dispute between the Applicants and the Union is the interpretation and/or application of the Union's dispatch rules. Specifically, whether or not the Union erred in concluding that the Applicants' layoffs were only temporary; whether or not the Applicants had, in effect, quit within the meaning of the Union's dispatch rules; and whether or not their names were placed on the dispatch board in the appropriate sequence. Contrary to the argument of the Applicants, the decision of the Court of Appeal in *McNairn, supra*, is not ambiguous on this point and, with all due respect, it is indistinguishable on all salient points. Simply put, the Court of Appeal in *McNairn, supra,* concluded that disputes between a member and a trade union related to the application and/or interpretation of hiring hall and dispatch rules do not fall within the jurisdiction that has been delegated to this Board pursuant to s. 36.1 of the *Act*.

[24] As a consequence, and notwithstanding that both the Applicants and the Union stated their preference that this Board hear and adjudicate their dispute, we find that the essential character of their disputes does not engage the limited jurisdiction that has been delegated to this Board pursuant to s. 36.1. Simply put, while we have authority to hear and determine similar types of disputes, the legislature did not include this particular type of dispute in the authority granted to this Board. As such, jurisdiction over these matters rests with the courts.

Conclusion:

[25] For the foregoing reasons, the Union's preliminary motion is granted and the Applicants' applications are hereby dismissed.

DATED at Regina, Saskatchewan, this **17th** day of **September, 2012.**

LABOUR RELATIONS BOARD

---

[4] Ibid. Note 1.

Steven D. Schiefner,
Vice-Chairperson