

October 15, 2013

Mr. Arop Rou
P.O. Box 2396
MELFORT SK SOE 1A0

Gerrand Rath Johnson
700 – 1914 Hamilton St.
REGINA SK S4P 3N6

Attention: Ms. Crystal Norbeck

Dear Sir and Madam:

RE: LRB File Nos. 060-13 & 121-13
Arop Rou v. Saskatchewan Government Employees Union
Section 25.1 of *The Trade Union Act*

Background

Mr. Arop Rou (hereinafter the “Applicant”) applied to the Board on April 26, 2013, alleging that the Saskatchewan Government Employees Union (hereinafter the “Union”) failed to properly represent him in respect of his dismissal from his employment with the Ministry of Social Services in August of 2008.

In his application, the Applicant alleged that the termination of his employment was racially motivated and that the Union failed to support him with respect to his termination.

In its Reply, the Union sought better particulars of the complaints made by the Applicant, which particulars were not provided. The Reply noted that the Applicant was suspended and terminated in 2009.

On May 21, 2013, the Union made application to the Board for summary dismissal of the Applicant’s claim. In accordance with the process outlined by the Board in its decision in *Construction Workers Union, Local 151 v. Nicole Wilson et al* (LRB File No. 049-13, decision dated May 28, 2013), the Board initially considered whether or not the matter was one which should be accorded an oral hearing or was it a matter which could be appropriately dealt with through written submissions and an *in camera*

process. A panel of the Board met on September 10, 2013 and determined that the matter was one which could be dealt with *in camera*.

In accordance with its procedures, the Board Registrar wrote to both parties seeking submissions. The Union relied upon its submission made in support of the application for summary dismissal. No factual response was received from the Applicant. His response was limited to comments on the procedure being followed by the Board.

A panel of the Board met on October 8, 2013 to determine if the Application (LRB File No. 060-13) should be summarily dismissed. On consideration, the Board determined, for the reasons that follow, that the application should be summarily dismissed.

Facts

The Application is devoid of significant facts. From the Application and Reply we can determine that the Applicant was suspended and subsequently dismissed from his employment with the Ministry of Social Services. However, the date on which this event occurs is noted as October, 2008 by the Applicant and in 2009 by the Union.

The Application alleges that the Union failed to proceed to arbitration with respect to the Applicant's claim against the Ministry of Social Services. There is nothing in the application that details any other steps having been taken with respect to a grievance procedure.

The Union requested particulars from the Applicant, but none were forthcoming.

Analysis and Decision

The Board recently¹ adopted the following as the test to be applied by the Board in respect of its authority to summarily dismiss an application (with or without an oral hearing) as being:

- 1. In determining whether a claim should be struck as disclosing no arguable case, the test is whether, assuming the applicant proves everything alleged in his claim, there is no reasonable chance of success. The Board should exercise its jurisdiction to strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.*

¹ *International Brotherhood of Electrical Workers, Local 529 et al. v. KBR Wabi Ltd. et al.*, LRB File Nos.: 188-12, 191-12, 192-12, 193-12, 198-12, 199-12, 200-12 & 201-12.

2. *In making its determination, the Board may consider only the application, any particulars furnished pursuant to demand and any document referred to in the application upon which the applicant relies to establish his claim.*

A secondary issue raised by the reply from the Union is the timeliness of the application, which was filed some 4 or 5 years after the events occurred that are complained about. The Union argues that the application should be struck as being “out of time”.

Does the Application disclose an Arguable Case?

An analysis of the Applicant’s application does not disclose an arguable case. The application is disjointed and is focused upon allegations of racial bias as being the reason why he was terminated from his employment. However, there is no suggestion that the Union discriminated against the Applicant on racial grounds. Rather, the application expresses an opinion that the Union failed to properly represent him because “they have sold me out to the employer”. There is no factual basis presented for this claim, which, if proven, might give rise to a breach of Section 25.1 of the *Act*.

When asked to provide particulars, the Applicant did not do so. As a result, this left his application seriously devoid of any factual basis to support his claim against the Union.

In summary, the application provides as follows:

1. *The paragraph 4(a) of the application, which is where the applicant is to set out the factual basis for his claim, the applicant makes allegations of racism against the employer.*
2. *In paragraph 4(b) he identifies the time of the alleged violation as “probably Aug 2008 – Pls refer to the file”.*
3. *Paragraph 4(c), where the applicant was to provide information as to the outcome of his grievance, he notes that he was the “first to lodge a grievance or a complaint against a co worker to the employer way back in La Ronge My complaint was ignored. Union did nothing.*
4. *In paragraph 4(d) where the applicant was to describe what appeal processes he engage in with the Union he replied”*

*I am unfortunately not well versed in Union politics of appeal. What I had anticipated is that I should not have to appeal in the first place
Why appeal?*

5. *The applicant then goes on to cite a sense of betrayal that the employer had violated “every letter in the collective agreement”. He alleged that he was being treated as the offender rather than the victim of racism and that the Union failed to take his complaint seriously.*

With further details and facts (or particulars), the allegations might have given rise to an arguable case. Regrettably, the allegations alone, without any factual basis or context do not, in our opinion, give rise to an arguable case.

Was the application filed too late?

In its decision in *Dishaw V. Canadian Office and Professional Employees*,² the Board dealt with the issue of delay by an applicant in filing an application under Section 25.1 of the *Act*. In that decision, the Board found a delay of over twenty three (23) months to be excessive. For the reasons given in that decision, we agree that a delay of in excess of twenty three (23) months in the circumstances of this case is equally excessive. We would, therefore, also dismiss this application on the basis of excessive delay in filing the application.

For these reasons, the application by the Applicant under Section 25.1 of the *Act* is hereby summarily dismissed pursuant to section 18(p) of the *Act*. An appropriate Order will issue.

Yours truly,

Kenneth G. Love, Q.C.
Chairperson

Enclosure

KGL/cp

² [2009] CanLII 507 (SK LRB)