



April 29, 2014

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Attention: Ms. Crystal L. Norbeck

Attention: Mr. Neil J.D. Tulloch

Dear Madam and Sir:

RE: LRB File Nos. 162-13 to 166-13

Background:

1. By Order dated November 21, 2013, the Board determined that the Respondent in this application, Magna Electric Corporation, had committed an unfair labour practice contrary to Section 11(1)(c) of *The Trade Union Act*. As a part of that order, the Board awarded monetary loss suffered by affected employees, but left the quantum of that monetary loss to the parties to resolve. The Board retained jurisdiction to determine the quantum of the loss should the parties fail to come to an agreement.¹
2. The parties failed to come to an agreement regarding the amount of monetary losses suffered by the affected employees. The International Brotherhood of Electrical Workers, Local Union 2038 applied to the Board to have the amount of monetary loss determined by the Board. The Board met on March 28, 2014 to hear argument from the parties in respect of the matter.
3. On March 31, 2014, the Board issued its order the amount of monetary loss suffered, with reasons to follow. These are those reasons.

Facts:

4. The facts with respect to this matter are outlined in our decision dated November 21, 2013. For the purposes of these reasons the relevant facts which need to be repeated are:
 - (a) there were (4) four employees from New Brunswick who were engaged as Electricians to work for the Employer at its project at Boundary Dam near Estevan.
 - (b) As a result of their union organizing activity, (3) three of them, Adam Keith, Jeff Thompson and Dan Baird were all terminated from their employment.
 - (c) Steven Keith, who had accompanied the other (3) three from New Brunswick, was not terminated, but decided to quit his employment upon learning that the other 3 had been terminated.

Issues:

5. There were two issues to be determined. They are:
 - (a) which employees were eligible to receive monetary loss; and
 - (b) what should be the amount of the monetary loss awarded.

Decision

6. In its Order of March 31, 2014, the Board ordered that compensation be payable to Adam Keith, Jeff Thompson and Dan Baird, but not to Steven Keith. Those (3) three employees were to be paid a “sum of money equal to the amount which they would have otherwise earned for the period May 14, 2013 to June 3, 2014, both inclusive, calculated at their usual rates of pay and terms of employment”. Additionally, holiday pay calculated at 3/52 of the amounts to be paid was also ordered. Such payments were subject to all normal statutory deductions.

¹ See the Decision and Order of the Board, both dated November 21, 2013. Reasons reported at [2013] CanLII 74458 (SkLRB).

7. No monetary loss was ordered to be paid with respect to the living out allowances paid by the Employer to employees.

Reasons for Decision

8. The Board excluded Mr. Steven Keith from any claim for monetary loss because he had not been terminated, but rather, chose to resign his employment upon learning of the termination of the other employees. While it may have been likely that he too would have been terminated on his return to work (he was absent from work due to sickness on the day the other employees were terminated), the Board cannot speculate as to what actions the Employer may have taken. Evidence at the original hearing was that Steven Keith was not involved in the incident at the Boston Pizza² and was not actively involved in the Union organizing campaign.
9. By choosing not to return to work and return to New Brunswick, Steven Keith precluded the taking of any action by the Employer. Had he returned to work, he may well have been terminated, but drawing such a conclusion would be pure speculation.
10. As for Mr. Adam Keith and Mr. Jeff Thompson, they found work almost immediately at another project in Saskatchewan with a company whose employees were represented by IBEW, Local 2038. That employment commenced on June 4, 2013. Due to their re-employment and without any evidence provided to show that they continued to suffer any monetary loss after their re-employment, we have limited the amount of their loss to the period during which they were not employed.
11. Mr. Dan Baird did not return to Saskatchewan along with Adam Keith and Jeff Thompson. We understand that he continued to be unemployed for some

² Described in more detail in the decision of November 21, 2013.

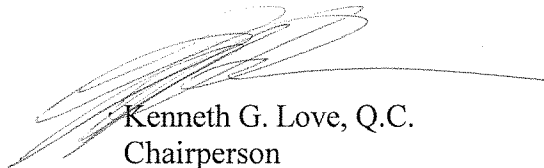
period, but we had no evidence to show either the length of that period, nor any reasons for his inability to find new employment. Absent any evidence, we thought it reasonable that he could have returned to Saskatchewan with Mr. Keith and Mr. Thompson and limited his monetary loss to the same time period in which Mr. Keith and Mr. Thompson remained unemployed.

12. Additionally, the project at Boundary Dam was winding down and there would not have been work there for any extended period. The limit of any loss suffered would have been the conclusion of the project when it wound down.

Living Out Allowance

13. We did not order that the employees should be paid the usual living out allowance paid to employees who are required to live away from their home on projects of this nature. The reason for that is simple, that is, that, for the greater part of the period in question, they were not living away from their home. Rather, they had returned home from Estevan to New Brunswick. Albeit they may have incurred some travel expenses to return home, they would have incurred those expenses, in any event, if they had worked to the conclusion of the project.

Yours truly,



Kenneth G. Love, Q.C.
Chairperson