

Editor's Note: Corrigendum released June 23, 2015. The original of the following Reasons for Decision of the Saskatchewan Labour Relations Board was corrected with text of the corrigenda appended.



UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS), Applicant v. COMFORT CABS LTD., JG TAXIS LTD., PHYLLIS SCHLOSSER INVESTMENT LTD., KHODR BARDOUH, JAMES FRIE and PHYLLIS SCHLOSSER, Respondents

LRB File Nos. 240-13 to 248-13 & 328-13; June 22, 2015

Vice-Chairperson Steven D. Schiefner; Members: Duane Siemens and Brenda Cuthbert

For the Applicant Union:	Mr. Peter J. Barnacle
For Comfort Cabs Ltd:	Mr. Robert J. Frost-Hinz
For JG Taxis Ltd., Phyllis Schlosser Investment Ltd., Khodr Bardouh, James Frie and Phyllis Schlosser:	Mr. Timothy J. Rickard

Unfair Labour Practices – Dismissal for Union Activity – Taxi drivers were exploring the potential of forming an association or joining a trade union at the time when taxi plates that had been leased by certain taxi drivers were unilaterally cancelled and driving privileges were suspended for some of them – In previous decision, Board finds that respondents violated s. 11(1)(a) and (e) of *Trade Union Act* – Board orders payment of compensation to affected taxi drivers – Board appoints agent to assist party in determining appropriate quantum of monetary loss within parameters established by Board – Parties unable to agree – Board determines quantum of compensation.

***The Trade Union Act*, s. 11(1)(a) and (e).**

REASONS FOR DECISION

Background:

[1] Steven D. Schiefner, Vice-Chairperson: On September 10, 2013, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (the "Union") filed a series of applications with the Saskatchewan Labour Relations Board (the "Board") alleging that Comfort Cabs Ltd. ("Comfort Cabs") committed various violations of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "Act") with respect to certain individuals who previously drove taxis for them. The common theme of these allegations was that Comfort Cabs had effectively terminated the

employment of several taxi drivers because of their involvement in, or support for, an organizing campaign in the workplace.

[2] Following a hearing into the Union's allegations, this Board made a finding that the respondents had violated s. 11(1)(a) & (e) of *The Trade Union Act* when the taxi plate leases granted to four (4) taxi drivers, together with the driving privileges previously enjoyed by these individuals, were terminated. Based on the evidence presented at that time, we were satisfied that the decisions of the respondents in taking these actions were tainted by a desire to punish union organizers and/or to discourage other taxi drivers from supporting the Union. As a result, we ordered monetary compensation to the affecting individuals, namely Mr. Nasir Bhatti, Mr. Ashan Kamboh, Mr. Qaisir Bhatti and Mr. Shakeel Arif Muhammad, for the unlawful termination of their taxi plate leases. With respect to the quantum of such compensation, the Board appointed an agent to work with the parties. In doing so, this Board gave the following guidance to the parties in its April 22, 2014 decision with respect to the quantification of said compensation:

1. Compensation should be retroactive to the date the taxi plate leases were unlawfully terminated.
2. The onus rests upon each of the subject drivers to demonstrate the remuneration they each received from their respective taxi plate leases. An examination of the revenue each earned (less expenses) in the six (6) month period immediately prior to their termination ought to provide a reasonable reference point from which to calculate the monthly net remuneration enjoyed by the subject drivers prior to the unlawful termination of their taxi plate leases.
3. Compensation for monetary losses ought to continue until such time as the subject drivers enter into new lease arrangements for taxi plates through Comfort Cabs or with the franchise owners or for a period not exceeding six (6) months from the date of these Reasons for Decision. In our opinion, six (6) months is equivalent to a reasonable period of notice for termination of a taxi plate lease.
4. The usual rules regarding the duty to mitigate damages ought to apply.

[3] Unfortunately, the Board's agent was unable to achieve an agreement of the parties. As the result, the issue of quantification of the compensation to the affected individuals returned to the Board on December 9, 2014.

[4] When this matter returned to the Board, while the parties had not agreed on the quantum of compensation, they had agreed on the number of matters:

1. That a representative of Saskatchewan Government Insurance ("SGI") ought to be appointed as an agent of the Board to determine the average daily *rate* for each of the respective drivers. SGI is routinely called upon to calculate the daily earning of taxi drivers for compensation purposes when vehicles are damaged. Compensation in such events is calculated by inputting various parameters into a calculation tool utilized by SGI. The result of these calculations is referred to as the "*average daily rate*".
2. That, in the event of a dispute between the parties, this Board would determine the average number of days per week that each of the subject drivers drove taxi prior to termination of their taxi plate leases.
3. That the quantum of reasonable mitigation would be determined by the Board.
4. That the Board would determine whether or not any of the subject drivers were entitled to compensation for expenses.

[5] The Board heard evidence and argument from the parties on these issues in Saskatoon on December 9 & 10, 2014. The Union called Mr. Nasir Bhatti, Mr. Qaisir Bhatti, Mr. Shakeel Arif Muhammad, and Mr. Ahsan Kamboh. In addition, the parties also relied on the evidence heard by this Board in the Union's original application.

[6] Ms. Nadine Hetherington was appointed by the Board on December 11, 2014 to calculate the average daily rate for each of the subject drivers. The requisite information for this calculation was supplied to Ms. Hetherington by the parties and Ms. Hetherington calculated the average daily rates for each of the subject drivers as follows:

Mr. Nasir Bhatti - \$176.00 per day.
 Mr. Qaisir Bhatti - \$69.00 per day.
 Mr. Ashan Kamboh - \$88.00 per day.
 Mr. Shakeel Arif Muhammad - \$277.00 per day.

[7] No objection or dispute was raised by any of the parties regarding the calculation of the average daily rates determined by Ms. Hetherington and thus these calculations were accepted as evidence by this Board.

[8] All of the subject drivers began working for Comfort Cabs when that company was originally formed in 2009. Upon joining Comfort Cabs, Mr. Nasir Bhatti, Mr. Shakeel Arif Muhammad and Mr. Ahsan Kamboh were each given the opportunity to lease a taxi plate from one of the franchise owners who were affiliated with Comfort Cabs. Previously, these individuals neither leased nor owned a taxi plate. Rather, they merely drove for someone else as a shift driver. In the case of Mr. Qaisir Bhatti, he was already leasing a taxi plate when Comfort Cabs was formed. As a consequence, concomitant with the formation of Comfort Cabs (or at least soon thereafter), all of the subject drivers were (or became) lease operators. As this Board noted in its previous decision, the primary reason taxi drivers seek to lease a taxi plate is so that they can generate additional revenue by renting their taxi to other drivers.

[9] Based on our decision in the Union's original application dated April 22, 2014, the period of compensation for each of the subject drivers commences on the date their taxi leases were terminated until October 22, 2014. Specifically:

Driver:	Period of Eligible Compensation:	Weeks in Issue:
Nasir Bhatti	January 10, 2013 to October 22, 2014	92 weeks & 1 day
Ahsan Kamboh	July 28, 2013 to October 22, 2014	64 weeks & 3 days
Qaisir Bhatti	August 27, 2013 to October 22, 2014	60 weeks & 1 day
Shakeel Muhammad	August 27, 2013 to October 22, 2014	60 weeks & 1 day

Compensation for Mr. Nasir Bhatti:

[10] Mr. Nasir Bhatti testified that, in January of 2013, he was operating a 2003 Chevy Impala with a lease plate owned by JG Taxi Ltd. (Mr. Jim Frie). Mr. Bhatti paid lease fees to Mr. Frie in the amount of \$1,200/month. Mr. Bhatti's car was operated, for the most part, on a twenty-four (24) hour basis, typically with two (2) drivers working twelve (12) hour shifts. In March of 2014, Mr. Bhatti testified that he normally drove one (1) shift and rented his

car to another driver for the other shift. Mr. Bhatti's shift driver paid him \$450/week. The Board's agent has calculated Mr. Bhatti's average daily rate to be \$176.00

[11] Mr. Bhatti testified that he drove his car every week; some weeks as few as two (2) days per week; but most weeks he drove his car every day. Records from Comfort Cabs indicate that, for the forty-two (42) day period between November 30, 2012 to January 10, 2013, Mr. Bhatti drove taxi for a total of thirty-nine (39) days. In other words, for three (3) weeks, Mr. Bhatti drove his taxi six (6) days/week and for two (2) weeks, he drove his taxi seven (7) days/week.

[12] Mr. Nasir Bhatti testified that, after his lease was terminated, his primary focus was to obtain his plate back and/or to lease another taxi plate. However, none of the respondents were willing to lease him a new taxi plate. On the other hand, Comfort Cabs offered to place Mr. Bhatti to its "*drivers list*"; a list used by lease operators to find drivers. Mr. Bhatti testified that he did not want to be just a driver; rather, he wanted to be a lease operator. As a consequence, he did not avail himself of this option. Mr. Bhatti also did not apply to any other dispatch company in Saskatoon to drive taxi. Rather, Mr. Bhatti went to work in a private garage. Mr. Bhatti testified that he fixed and repaired vehicles out of this garage and that he was self-employed in doing so. Apparently, Mr. Bhatti did not make much money doing this work. For example, Mr. Bhatti estimated that in 2013 he only earned \$5,300 as a private automotive mechanic. By 2014, Mr. Bhatti's income had increased to approximately \$900/month. Mr. Bhatti continued working as a private automotive mechanic until September of 2014, when Mr. Bhatti began attending school. In cross-examination, Mr. Bhatti admitted that, as a private automotive mechanic, he worked for cash. In some cases, he gave receipts to his customers, but in most cases he did not.

[13] As indicated, the parties have agreed that Mr. Nasir Bhatti's compensation should be based on the average daily rate determined by the Board's agent of \$176.00 per day. Based on the evidence, we are satisfied that Mr. Bhatti worked approximately six (6) days a week in the period prior to his termination. We are also satisfied that his compensation ought to be calculated on the assumption that he would have continued to work at this rate during the compensable period of January 10, 2013 to October 22, 2014. This calculates into approximately \$98,032.00 (\$176 x 557 days). However, this amount must be adjusted by Mr. Bhatti's obligation to mitigate his losses during the compensable period.

[14] Following the loss of Mr. Bhatti's plate lease, there would have been an understandable period of transition to alternate employment. In our opinion three (3) months is a reasonable period for Mr. Bhatti to begin replacing his lost income, at least in part. Mr. Bhatti declared his income to be between \$500 and \$900 per month during the compensable period. However, Mr. Bhatti was a taxi driver before Comfort Cabs was formed and he was offered the opportunity to work for Comfort Cabs as a taxi driver. While Mr. Bhatti may have had his own reasons for not accepting that offer and/or not looking for work as a taxi driver with another dispatcher/broker, he could have made more money as a taxi driver. In March of 2014, Mr. Ahsan Kamboh testified that a taxi driver can reasonably expect to make approximately \$2,000 per month, after paying his/her expenses, including shift rental, fuel, office expenses and other charges. Absent other more compelling evidence, we accept Mr. Kamboh's testimony on this point. In our opinion, Mr. Bhatti was responsible to mitigate his losses and he could have earned \$2,000 per month as a taxi driver. We impute income for Mr. Bhatti in the amount of \$2,000 per month for eighteen (18) months of the compensable period. As a consequence, Mr. Bhatti's compensation must be reduced by \$36,000.

[15] Finally, Mr. Bhatti seeks compensation for expenses following the termination of his taxi plate leases and driving privileges, including loss on the sale of his car in the estimated amount of \$700.00, and the cost of purchasing tools in the amount of \$439.09. In our opinion, neither of these amounts is compensable. With respect to the 2003 Impala, Mr. Bhatti's perception that his car was worth more than he received for it when he sold it is not evidence of loss. With all due respect, Mr. Bhatti's perception that he lost money when he sold his car provides an inadequate evidentiary foundation for compensation. In addition, his vehicle would have experienced depreciation had he continued to operate it as a taxi under his original lease. Finally, the compensable period defined by the Board included six (6) months of notice, which ought to have been adequate for the orderly disposition of Mr. Bhatti's vehicle following the termination of his lease. With respect to the tools and shop supplies purchased by Mr. Bhatti, presumably he still has these tools in his possession and they would have residual value. Without knowing the residual value of these items, it is not possible to calculate a loss.

[16] As a result, we find that Mr. Nasir Bhatti is entitled to total compensation from the respondents in the amount of \$62,032 (\$98,032 - \$36,000 = \$62,032).

Compensation for Mr. Ahsan Kamboh:

[17] Mr. Kamboh testified that, in 2013, he was operating a couple different taxis with lease plate(s) owned by JG Taxi Ltd. (Mr. Jim Frie). Mr. Bhatti paid lease fees to Mr. Frie. Mr. Kamboh's cars were operated, for the most part, on a twenty-four (24) hour basis, typically with two (2) drivers working twelve (12) hour shifts. Mr. Kamboh testified that he normally drove the night shift and that he rented his car to another driver for the day shift. The Board's agent calculated Mr. Kamboh's average daily rate to be \$88.00

[18] Mr. Kamboh testified that he drove vehicles bearing nos. 173 and 304. Records from Comfort Cabs indicate that for the period prior to July of 2013, Mr. Kamboh was driving taxi approximately six (6) days per week.

[19] Mr. Kamboh testified that, after his lease was terminated in July of 2013, he worked various odd jobs. He worked in Alberta; he worked in construction in North Battleford; and he drove for both Comfort Cabs and Radio Cabs. Of particular significance, Mr. Kamboh worked for Ainsworth Engineered Canada LP in 2013 for two (2) months and was paid \$15,691. Mr. Kamboh also worked for CMB Contractors Corp for two (2) months and was paid \$8,700. It should be noted that Mr. Kamboh employment in the construction sector was sporadic. In addition, Mr. Kamboh testified that he was unable to work for June, July, August and September of 2013. Mr. Kamboh testified that he was first able to work in October of 2013. In cross-examination, Mr. Kamboh admitted that he was offered the opportunity to drive a taxi during the compensable period but that he did not want to just "drive" taxi; he wanted to lease a taxi plate. As a consequence, he declined the offer and explored other employment options.

[20] The parties have agreed that Mr. Kamboh's compensation should be based on the average daily rate determined by the Board's agent of \$88.00 per day. Based on the evidence, we are satisfied that Mr. Kamboh worked six (6) days per week in the period prior to August of 2013. We are also satisfied that his compensation ought to be calculated on the assumption that he would have continued to work at this rate during the compensable period of July 28, 2013 to October 22, 2014. This calculates into approximately \$33,968.00 (\$88 x 386 days). However, this amount must be adjusted by Mr. Kamboh's obligation to mitigate his losses.

[21] Following the loss of Mr. Kamboh's taxi lease, there would have been an understandable period of transition to alternate employment. In light of Mr. Kamboh's illness,

we find that five (5) months is a reasonable period for him to begin replacing his lost income. Mr. Kamboh demonstrated the capacity to earn significant sums of money. On the other hand, he testified that his expenses in doing so were very high. As with Mr. Bhatti, we note that Mr. Kamboh was a taxi driver before Comfort Cabs was formed and he was offered opportunity to work for Comfort Cabs as a taxi driver. Mr. Kamboh did drive for Comfort Cabs, as well another dispatcher. While Mr. Kamboh had every right to pursue other employment opportunities and he may well have had a number of reasons for not wanting to just be a taxi driver, we cannot discount the fact that he could have replaced a significant percent of his income by driving taxi. In our opinion, Mr. Kamboh was responsible to mitigate his losses and he could have earned \$2,000 per month as a taxi driver. We therefore impute income for Mr. Kamboh in the amount of \$2,000 per month for nine (9) months of the compensable period. As a consequence, Mr. Bhatti's compensation must be reduced by \$18,000.

[22] As a result, we find that Mr. Kamboh is entitled to total compensation from the respondents in the amount of \$15,968 ($\$33,968 - \$18,000 = \$15,968$).

Compensation for Qaisir Bhatti:

[23] Mr. Qaisir Bhatti testified that, in August of 2013, he was operating a taxi with Comfort Cabs using a lease plate owned by Phyllis Schlosser Investment Ltd. Mr. Bhatti paid lease fees in the amount of \$453/week. At this same time, Mr. Bhatti was also operating a sheep farm near Saskatoon. Because of Mr. Bhatti's need to monitor his livestock, he preferred to work the night shift and only drove about four (4) days per week. For the balance of available shifts, Mr. Bhatti would rent his taxi to another driver. The Board's agent has calculated Mr. Qaisir Bhatti's average daily rate to be \$69.00

[24] Mr. Qaisir Bhatti was offered the opportunity to drive taxi for Comfort Cabs soon after he lost his lease plate. However, he declined this initial offer because the available shifts were day shifts and, as mentioned, he couldn't work day shifts because of his farming operations. However, in 2014, Mr. Bhatti began driving taxi on a part time basis for Comfort Cabs and did so from March 19, 2014 to April 7, 2014. Mr. Bhatti decided to no longer drive part time for Comfort Cabs because he felt he could make more money elsewhere and he began working on a dairy farm in May of 2014. On average, Mr. Bhatti earned \$1,392 per month working on the dairy farm. Mr. Bhatti did not testify as to how much money he earned from farming either before or after the loss of his lease plate other than he indicated that he sold more lambs and thus made more money after he lost his taxi plate.

[25] As indicated, the parties have agreed that Mr. Qaisir Bhatti's compensation should be based on the average daily rate determined by the Board's agent of \$69.00 per day. Based on the evidence, we are satisfied that Mr. Bhatti worked approximately four (4) days a week in the period prior to his termination. We are also satisfied that Mr. Bhatti's compensation ought to be calculated on the assumption that he would have continued to work at this rate during the compensable period of August 27, 2013 to October 22, 2014. This calculates into approximately \$16,560.00 (\$69 x 240 days). However, this amount must be adjusted by Mr. Bhatti's obligation to mitigate his losses.

[26] Following the loss of Mr. Bhatti's taxi lease, there would have been an understandable period of transition to alternate employment. In our opinion, three (3) months is a reasonable period for him to begin replacing his lost income. Complicating this transition was the fact that Mr. Bhatti was a sheep farmer and this limited his availability to work off the farm. On the other hand, Mr. Bhatti was a part time taxi driver before he lost his lease plate and he continued to drive part time for Comfort Cabs after he lost his lease plate. He also worked on a nearby dairy farm. While Mr. Bhatti had the right to pursue his farming aspirations, we cannot discount the fact that he was capable of replacing a percent of his lost income by working off the farm on a part-time basis, either as a taxi driver or farm hand. In our opinion, Mr. Bhatti was capable of earning replacement income of approximately \$1,392 per month in off farm income. As a consequence, we impute income for Mr. Bhatti in the amount of \$1,392 per month for ten (10) months of the compensable period. As a consequence, Mr. Bhatti's compensation must be reduced by \$13,920.

[27] As a result, we find that Mr. Qaisir Bhatti is entitled to total compensation from the respondents in the amount of \$20,048 (\$33,968 - \$13,920 = \$20,048).

Compensation for Mr. Shakeel Arif Muhammad:

[28] Mr. Shakeel Arif Muhammad testified that, in August of 2013, he was operating a 2006 Toyota Prius as a taxi with a lease plate owned by JG Taxi Ltd. The Board's agent has calculated Mr. Bhatti's average daily rate to be \$277.00

[29] Mr. Muhammad testified that, after he lost his taxi plate lease, he actively tried to find another taxi to drive. Mr. Muhammad testified that no shifts were available at first but by October 28, 2013, he was driving full time for Comfort Cabs; but only as a driver; not as a

lease operator. Mr. Muhammad did not testify as to how much money he earned as a taxi driver after October 28, 2013. As a consequence, the only evidence available to this Board as to the quantum Mr. Muhammad earned is the evidence of Mr. Kamboh from March of 2014 that a taxi driver can reasonably expect to earn approximately \$2,000 per month driving a taxi.

[30] The parties have agreed that Mr. Muhammad's compensation should be based on the average daily rate determined by the Board's agent of \$277.00 per day. Based on the evidence, we are satisfied that Mr. Muhammad worked seven (7) days a week in the period prior to his termination. We are also satisfied that his compensation ought to be calculated on the assumption that he would have continued to work at this rate during the compensable period of August 27, 2013 to October 22, 2014. The assumption was corroborated by Comfort Cab's records which indicates that Mr. Muhammad worked every day he could. This calculates into approximately \$116,617.00 (\$277 x 421 days). However, this amount must be adjusted by Mr. Muhammad's obligation to mitigate his losses.

[31] Following the loss of Mr. Muhammad's taxi lease, there would have been an understandable period of transition to alternate employment. Based on Mr. Muhammad's testimony, this transition took approximately two (2) months. Mr. Muhammad did not testify as to how much money he earned as a taxi driver after October 28, 2013. As a consequence, the only evidence available to this Board as to the quantum Mr. Muhammad earned is the evidence of Mr. Kamboh from March of 2014 that a taxi driver can reasonably expect to earn approximately \$2,000 per month driving a taxi. We therefore impute income for Mr. Muhammad in the amount of \$2,000 per month for eleven (11) months of the compensable period. As a consequence, Mr. Bhatti's compensation must be reduced by \$22,000.

[32] As a result, we find that Mr. Qaisir Bhatti is entitled to total compensation from the respondents in the amount of \$94,617 ($\$116,617 - \$22,000 = \$94,617$).

Conclusions:

[33] For the foregoing reasons, we find that Mr. Nasir Bhatti, Mr. Ashan Kamboh, Mr. Qaisir Bhatti, and Mr. Shakeel Arif Muhammad are entitled to be paid compensation by the respondents in the following amounts:

Mr. Nasir Bhatti:	\$62,032.00
Mr. Ashan Kamboh	\$15,968.00

Mr. Qaisir Bhatti	\$20,048.00
Mr. Shakeel Arif Muhammad	\$94,617.00

[34] Board members Duane Siemens and Brenda Cuthbert both concur with these Reasons for Decision.

DATED at Regina, Saskatchewan, this **22nd** day of **June, 2015**.

LABOUR RELATIONS BOARD

“Original Signed by”

Steven D. Schiefner,
Vice-Chairperson

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS), Applicant v. COMFORT CABS LTD., JG TAXIS LTD., PHYLLIS SCHLOSSER INVESTMENT LTD., KHODR BARDOUH, JAMES FRIE and PHYLLIS SCHLOSSER, Respondents

LRB File Nos. 240-13 to 248-13 & 328-13; June 23, 2015

Vice-Chairperson Steven D. Schiefner; Members: Duane Siemens and Brenda Cuthbert

CORRIGENDUM

[35] Steven D. Schiefner, Vice-Chairperson: Paragraphs 27, 32 and 33 of the Reasons for Decision in the within proceedings issued by the Board on June 22, 2015 contained errors. The paragraphs should read as follows;

[27] As a result, we find that Mr. Qaisir Bhatti is entitled to total compensation from the respondents in the amount of \$16,560 (\$16,560 - \$13,920 = \$2,640.00).

[32] As a result, we find that Mr. Shakeel Arif Muhammad is entitled to total compensation from the respondents in the amount of \$94,617 (\$116,617 - \$22,000 = \$94,617).

[33] For the foregoing reasons, we find that Mr. Nasir Bhatti, Mr. Ashan Kamboh, Mr. Qaisir Bhatti, and Mr. Shakeel Arif Muhammad are entitled to be paid compensation by the respondents in the following amounts:

Mr. Nasir Bhatti:	\$ 62,032.00
Mr. Ashan Kamboh	\$ 15,968.00
Mr. Qaisir Bhatti	\$ 2,640.00
Mr. Shakeel Arif Muhammad	\$ 94,617.00

[36] As a result, the Order issued June 22nd, 2015, will be rescinded and a corrected Order issued, reflecting the corrections identified in the Corrigendum.

DATED at Regina, Saskatchewan, this **23rd** day of **June, 2015**.

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson