



**CHRISTINA ROY, Applicant v. WORKERS UNITED CANADA COUNCIL, Respondent, & WINNERS MERCHANTS INTERNATIONAL L.P., Interested Party**

LRB File Nos. 154-14, 216-14 & 231-14; January 14, 2015

Vice-Chairperson, Steven D. Schiefner; Board Members: Mike Wainwright and Hugh Wagner

For the Applicant: Self Represented.  
For the Respondent Union: Mr. Gary Caroline.  
For the Interested Party: Ms. Susan B. Barber, Q.C.

**DUTY OF FAIR REPRESENTATION – Practice and Procedure – Applicant was subject of discipline by her employer culminating in termination of her employment - Applicant files application alleging that trade union contravened provisions of *Saskatchewan Employment Act* – The substance of the applicant’s allegations are that employer discriminated against her by failing to accommodate an alleged disability – Applicant does not allege wrong doing on party of respondent trade union - Both trade union and employer file applications asking that applicant’s application be summarily dismissed – Board determines that oral hearing not required to determine summary dismissal applications – Board notes that applicant’s application does not allege trade union’s conduct was arbitrary, discriminatory or indicative of bad faith – Board notes that applicant’s application does not identify any facts from which such conduct could be inferred - Board not satisfied that applicant’s application discloses an arguable case – Applicant’s application is summarily dismissed.**

***Saskatchewan Employment Act, s. 6-59 & 6-111(1)(p) & (q).***

**REASONS FOR DECISION**

**Background:**

[1] **Steven D. Schiefner, Vice-Chairperson:** The Workers United Canada Council (the “Union”) is the certified bargaining agent<sup>1</sup> for a unit of employees of Winners Merchants International L.P. in the City of Saskatoon, Saskatchewan (the “Employer”). The Applicant was,

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<sup>1</sup> See: Certification Order in LRB File No. 133-12a.

at all times relevant to these proceedings, a member of the Union's bargaining unit and an employee of the Employer until she was dismissed on May 12, 2014.

[2] On July 24, 2014, the Applicant filed an application<sup>2</sup> with the Saskatchewan Labour Relations Board (the "Board") naming the Union as a respondent and alleging violations of s. 2-40, 2-41 & 2-42 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15-1 (the "Act").

[3] On September 22, 2014, the Union filed an application<sup>3</sup> with the Board asking that the Applicant's application be summarily dismissed on that basis that none of the alleged violations set forth therein fall within the jurisdiction of this Board. In the alternative, the Union argues that the Applicant's application does not assert any wrong doing on the part of the Union; nor has the Applicant alleged any facts that could sustain an allegation that the Union breached any of the obligations imposed on it while it was representing her in her dealings with the Employer. On October 14, 2014, the Employer filed an application<sup>4</sup> with the Board also asking that the Applicant's application be summarily dismissed for essentially the same reasons. Simply put, although both the Union and the Employer dispute the Applicant's allegations, they argue that, even if we assume all of the Applicant's allegations to be true, her application does not raise an arguable case that the Union acted in a manner that was arbitrary, discriminatory or in bad faith or that the Union otherwise contravened the *Act*.

[4] On December 3, 2014, an *in camera* panel of the Board concluded that both applications seeking to summarily dismiss the Applicant's application could be determined without the need for an oral hearing. The applicant was advised of this determination and granted the opportunity to respond to these applications and/or to file additional material with the Board in response to the request that her application be summarily dismissed. The Applicant did not respond to either application nor did she file any additional material with the Board.

[5] The applications for summary dismissal were considered by an *in camera* panel of the Board on January 7, 2015. The material relied upon by the Board was the Applicant's application including her testament of events and attached documents, the Union's application for summary dismissal and the Employer's application for summary dismissal.

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<sup>2</sup> Application bearing LRB File No. 154-14.

<sup>3</sup> Application bearing LRB File No. 216-14.

<sup>4</sup> Application bearing LRB File No. 231-14.

[6] In our opinion, the applications for summary dismissal are well founded. Simply put, the Applicant has not alleged any wrong doing on the part of the Union nor any facts that could support a finding that the Union's conduct in representing her was discriminatory, arbitrary or in bad faith. These are our reasons for that conclusion.

**Relevant statutory provision:**

[7] The following provisions of *The Saskatchewan Employment Act* are relevant to our determinations:

**6-59(1)** An employee who is or a former employee who was a member of the union has a right to be fairly represented by the union that is or was the employee's or former employee's bargaining agent with respect to the employee's or former employee's rights pursuant to a collective agreement or this Part.

(2) Without restricting the generality of subsection (1), a union shall not act in a manner that is arbitrary, discriminatory or in bad faith in considering whether to represent or in representing an employee or former employee.

...

**6-111(1)** With respect to any matter before it, the board has the power:

...

(p) to summarily dismiss a matter if, in the opinion of the board, there is a lack of evidence or no arguable case;

(q) to decide any matter before it without holding an oral hearing;

**Jurisdiction of the Board with respect to Applications for Summary Dismissal:**

[8] The Board recently<sup>5</sup> 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 is able to prove everything alleged in his/her claim, there is no reasonable chance of success. The Board should exercise its jurisdiction to strike on this

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<sup>5</sup> See: *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

ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.

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

**[9]** Generally speaking, summary dismissal is a vehicle for the disposition of applications that are patently defective. The defect(s) must be apparent without the need for weighing of evidence, assessment of credibility, or the evaluation of novel statutory interpretations. Simply put, in considering whether or not an impugned application ought to be summarily dismissed, the Board assumes that the facts alleged in the main application are true or, at least, provable. Having made this assumption, if the Board is not satisfied that the main application at least discloses an arguable case, and/or if there is a lack of evidence upon which an adverse finding could be made, then the main application is summarily dismissed in the interests of efficiency and the avoidance of wasted resource.

#### **The Applicant's Application and the Facts Alleged therein:**

**[10]** As indicated, in her application, the applicant alleges violations of sections 2-40, 2-41 & 2-42 of *The Saskatchewan Employment Act*. These provisions read as follows:

*2-40(1) Subject to subsections (2) to (4), except for just cause unrelated to injury or illness, **no employer shall** take discriminatory action against an employee because of absence:*

- (a) due to the illness or injury of the employee; or*
- (b) due to the illness or injury of a member of the employee's immediate family who is dependent on the employee.*
- (2) Subsection (1) only applies if:*
  - (a) the employee has been in the employer's service for more than 13 consecutive weeks before the absence;*
  - (b) the absence does not exceed:*
    - (i) a total of 12 days in a calendar year, in the case of illness or injury that is not serious; or*
    - (ii) 12 weeks in a period of 52 weeks, in the case of serious illness or injury; and*
  - (c) the employee, if requested in writing by the employer, provides the employer with a certificate of a duly qualified medical practitioner certifying that the employee was incapable of working due to illness or injury or certifying the illness or injury of the member of the employee's immediate family, as the case may be.*

(3) *The protection afforded by subclause (2)(b)(i) does not apply if it can be demonstrated that the employee has a record of chronic absenteeism and there is no reasonable expectation of improved attendance.*

(4) *The period of absence permitted pursuant to subclause (2)(b)(ii) must be extended to 26 weeks in a period of 52 weeks if the employee is receiving compensation pursuant to The Workers' Compensation Act, 1979.*

(5) *Nothing in this section limits or abrogates an employee's rights at common law or pursuant to The Saskatchewan Human Rights Code.*

2-41 *An **employer shall** modify an employee's duties or reassign the employee to other duties if:*

*(a) the employee becomes disabled and the disability would unreasonably interfere with the performance of the employee's duties; and*

*(b) it is reasonably practicable to do so.*

2-42(1) *In this section, "lawful authority" means:*

*(a) any police or law enforcement agency with respect to an offence within its power to investigate;*

*(b) any person whose duties include the enforcement of this Act, another Act or an Act of the Parliament of Canada with respect to an offence within his or her power to investigate; or*

*(c) any person directly or indirectly responsible for supervising an employee.*

(2) ***No employer shall** take discriminatory action against an employee because the employee:*

*(a) has reported or proposed to report to a lawful authority any activity that is or is likely to result in an offence pursuant to an Act or an Act of the Parliament of Canada; or*

*(b) has testified or may be called on to testify in an investigation or proceeding pursuant to this Act, another Act or an Act of the Parliament of Canada.*

(3) *Subsection (2) does not apply if the actions of an employee are frivolous or vexatious.*

**(Emphasis added)**

[11] In addition, the applicant has attached a document entitled "My testament of events with Winners Merchants of Saskatoon", which document reads as follows:

*My testament of events with Winners merchants of Saskatoon*

*December 21, 2013      Witnesses: Dan (Union Rep for workers united Canada)*

*Was given a verbal warning and conduct improvement plan for calling in sick on December 21<sup>st</sup>.*

*It was not common practice to give warnings or counsel for being late or calling in sick with employees. This was out of the ordinary for an employee to be given a warning and monitored so closely.*

*The store manager of Winners in Saskatoon 8<sup>th</sup> St location (Sandy) would be degrading, rude and make me feel bad for calling in sick or late.*

Jan 30, 2014

Was given first written warning for attendance

Feb 16, 2014

*I was late this day because it was my usual scheduled time of work to start at 10:30am, so I was unknowingly late and the store manager (Sandy) yelled at me when I arrived in a degrading manner which exacerbated my stress and anxiety.*

Feb 18, 2014                      Witnesses: Theresa (CSR Supervisor)

*Had a conversation with manager (Tara) & (Dawn) to discuss being late on Feb 16<sup>th</sup> at the request of Shannon. I did not understand what was happening with my panic and anxiety, I admitted that I was not happy with my performance because of it however I didn't have the skills to recognize or cope with it and I didn't know how to change it. I was promised by the managers that help would be given, nothing came of it.*

April 26, 2014                      Witnesses: Theresa

*When Kamal & Theresa were watching the frontline staff to make sure the surveys, Canadian women's foundation (Charity), Cip's and loyalty card were being done. I told Kamal that I was not going to do the surveys. I was later called back up to cash from the floor and singled out so that Dawn could watch me because I wasn't doing the surveys, many employees and customers witnessed this. Dawn said that we would need to have a conversation about it. I asked her what time should we meet? I was called in to the office half an hour later because Dawn needed time to cool down and had to get the manager (Sandy). Sandy asked me in a bullying manner "Why do you think you're so special?" and "what I thought should happen?". She threatened that they made a few phone calls and could fire me but weren't going to, nor were they going to write me up. The manager (Sandy) made a statement that "we were going to send you home, but that's probably what you wanted so we aren't going to". They brought up changes that were supposedly made to accommodate me like putting me in the warehouse, and taking me off frontline. Sandy also threw in my face the fact that I went to the union when I was overlooked for a full time position to which I was qualified and in years of seniority for.*

April 29, 2014                      Witnesses: It was written that Theresa was present but she was NOT present

*Earlier in the day I was called to cash at frontline, but after numerous times being called to cash I went to the warehouse and requested to speak with a manager. Sandy paged me to the office. I told her I didn't want to go on cash as it was causing me anxiety but I did not feel that she was acknowledging my concern. Sandy Later in the day I was given 2<sup>nd</sup> written warning by the manager (Sandy) for attendance. Sandy told me at this time that the attendance was separate from the insubordination.*

May 4, 2014

*I was brought into the office and questioned by the manager (Sandy) about anxiety but I felt like it was an interrogation that would be used against me for dismissal. It made me feel uncomfortable and guilty for having anxiety. She questioned why it was happening NOW and made it feel like it was my choice to have anxiety. There was no reason for this meeting other than to belittle me.*

May 9, 2014                      Witnesses: Pam (Shop Steward)

*Sandy asked me if I was going to follow front line procedures and I responded no, meaning I was not capable of working at front cash due to the anxiety/panic attacks. Sandy suspended me without pay. Dawn was present.*

*May 11, 2014*

*I went with Pam to ask the manager (Sandy) for my file. After much hesitation from Sandy to release the documents she called me later to say I could pick up a copy of my file. I told her I would pick it up the next day (Monday)*

*May 12, 2014*

*Witnesses: Pam and Dawn*

*Was fired by the manager (Sandy)*

*The management used belittling tactics and intimidation which was causing more anxiety for me. I felt harassed and threatened to the point of distress. Sandy made insulting comments and made me feel intimidated to the point where I would be shaking. Sandy abuses her power as a store manager in an intimidating manner to try and control her staff. Sandy took trivial matters and incidents to use against myself in order to discipline me and ultimately dismiss me. I was not given help to accommodate the anxiety I was having but rather put into situations that exacerbated my anxiety to the point of frustration. I was singled out and targeted for things that numerous other employees including managers were not disciplined for. I did not get fair representation from the union regarding this matter. They did not request a medical note and I was not accommodated for my anxiety. I suffer from anxiety/panic disorder/depression, however I was not treated for this condition until June 17, 2014.*

**[12]** No other facts are asserted by the Applicant in her application. However, it is noted from the material attached to the Applicant's application that the Union appears to have filed a grievance on her behalf disputing her termination. No information was provided by the Applicant regarding the status or outcome of her termination grievance.

**Does the Applicant's Application Disclose an Arguable Case:**

**[13]** In our opinion, the Applicant's application does not disclose an arguable case that the Union has violated *The Saskatchewan Employment Act* nor does her application allege any facts that could support the conclusion that the Union's representation of her was discriminatory, arbitrary or in bad faith. Firstly, none of the sections of the *Act* cited in the Applicant's application impose any obligations on a trade union. These provisions govern the conduct of employers; not trade unions. As a consequence, regardless of whether or not the Applicant is correct that these provisions have been violated (allegations denied by both the Union and the Employer), no contravention of these sections could involve the Union. If these sections have been violated, they could not have been violated by the Union.

[14] Secondly, while the Applicant has alleged wrong doing on the part of the Employer, none of the facts asserted by the Applicant support a finding that the Union has breached its duty to fairly represent her. In fact, reading the Applicant's application would not lead the reader to believe that Ms. Roy has any dispute with the conduct of the Union or the representation she has received (other than she has named the Union as a respondent). The facts that the Applicant has alleged in her application involve complaints as to the conduct of her employer; not the Union. It is not axiomatic that inappropriate or unlawful conduct on the part of an employer implies a failure to represent on the part of a trade union. As this Board has noted in many cases, while the exclusive right to represent a unit of employees imposes many obligations on a trade union, there is no obligation on a trade union to guarantee that a particular result will be achieved or undesirable consequence will be avoided in the workplace. To establish an arguable case of a contravention by the Union, the Applicant must allege some specific acts or omissions on the part of the Union (and/or its agents) that support the conclusion that it has failed to satisfy the obligations imposed upon it; something the Applicant has failed to do.

[15] Furthermore, it is a common misconception that this Board is a governmental agency established to hear any and all complaints about or involving trade unions. However, a review of *The Saskatchewan Employment Act* quickly establishes that such is not the case. Numerous decisions of this Board have demonstrated that this Board's supervisory responsibility pursuant to now s. 6-59 of *The Saskatchewan Employment Act* (previously s. 25.1 of *The Trade Union Act*) is not to ensure that a particular member achieves a desired result or avoids an undesirable outcome; rather the purpose of the provision is to ensure that, in exercising its representative duty, a trade union does not act in a manner that is arbitrary, discriminatory or in bad faith. As a consequence, to sustain a violation of 6-59 of the *Act*, an applicant must allege and then satisfy this Board through evidence that his/her trade union has acted in a manner that is "arbitrary", "discriminatory" or in "bad faith". As this Board noted in *Lorraine Prebushewski v. Canadian Union of Public Employees, Local 4777*, (2010) 179 C.L.R.B.R. 2d) 104, 2010 CanLII 20515 (SK LRB), LRB File No. 108-09, these terms are not mere chalices into which applicants may pour their criticisms of their trade union for presentation to the Board. These terms have specific meanings that define the threshold for this Board to exercise its supervisory authority. Simply put, this Board does not sit on appeal of each and every decision made by a trade union; rather, very specific behavior/conduct on the part of a trade union is required to sustain a violation of the *Act*, that conduct being arbitrariness, discrimination or bad faith. See: *Cathy*



*Chabot v. Canadian Union of Public Employees, Local 4777*, 2007 CanLII 68749 (SK LRB), [2007] Sask. L.R.B.R. 401, LRB File No. 158-06.

[16] In the present application, the Applicant has not alleged that the Union's conduct was arbitrary or discriminatory or that its officials acted in bad faith. Nor has the Applicant alleged any facts from which such conduct could be inferred. As indicated, from reading the Applicant's application it is not apparent that she has any dispute with the conduct of the Union. As a consequence, the Applicant's application is patently defective in terms of alleging misconduct on the part of the Union and seeking relief from this Board.

**Conclusion:**

[17] For the foregoing reasons, we find that the Applicant's application does not disclose an arguable case that the Union has violated the provisions of *The Saskatchewan Employment Act*. As a consequence, the requests that the Applicant's application be summarily dismissed are well founded. It would be a waste of this Board's and the parties' scarce resources to conduct a hearing into an application that has no reasonable chance of success.

[18] Board Members Mike Wainwright and Hugh Wagner both concur with these Reasons for Decision.

**DATED** at Regina, Saskatchewan, this 14<sup>th</sup> day of January, 2015.

**LABOUR RELATIONS BOARD**

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Steven D. Schiefner,  
Vice-Chairperson