Saskatchewan
Labour Relations Board

SUDEEP CHAKLANABIS, Applicant v. RESIDENT DOCTORS OF SASKATCHEWAN, Respondent and THE UNIVERSITY OF SASKATCHEWAN, Respondent

LRB File No. 139-17; February 13, 2018

Chairperson, Kenneth G. Love, Q.C. (sitting alone pursuant to Section 6-95(3) of *The Saskatchewan Employment Act*)

For the Applicant:	Self-Represented
For the Respondent, Resident Doctors:	Gary Bainbridge
For the Respondent, The University of Saskatchewan:	Colin Neimer

Duty of Fair Representation – Applicant placed on academic probation by University in relation to his residency program. Applicant undertakes appeals from that decision with some assistance from Union.

Duty of Fair Representation – Applicant undertakes appeals of probationary decision of University – During period of time that appeals are underway, Applicant is on leave from program – As a result of leave, Applicant does not complete Residency program prior to his funding commitment expiring.

Duty of Fair Representation – Applicant alleges that Union failed to properly represent him with respect to his issues with University over his academic probation – Applies to the Board under section 6-59 alleging Union failed in its duty of fair representation.

Academic or Employment Related – Board reviews Court of Appeal decision and determines that issues were academic in nature and not grievable by the Union as not being employment related.

Duty of Fair Representation – Board reviews statutory and common law principles – finds that duty of fair representation not engaged with respect to academic issues not related to collective bargaining.

REASONS FOR DECISION

Background Facts:

[1] The Applicant, Sudeep Chaklanabis, ("Dr. Chaklanabis") entered into a five (5) year residency program in Psychiatry at the University of Saskatchewan (the "U of S") in July of 2011. His residency program funding was provided through a funding agreement with the Government of Canada through its Regional Psychiatric Centre. That funding was provided to Dr. Chaklanabis in exchange for a five (5) year Return for Service Contract at the Regional Psychiatric Centre. As a resident, Dr. Chaklanabis was a member of the Resident Doctors of Saskatchewan, ('RDS"). RDS has recently changed its name from the Professional Association of Internes and Residents of Saskatchewan, a trade union certified to bargain on behalf of resident doctors within the Province of Saskatchewan[1]. As yet, no application has been filed with the Board to amend the name of this trade union to its newly adopted name. Neverthless, we will reference RDS throughout the decision.

[2] During his Neurology rotation in 2011, Dr. Chaklanabis experienced difficulty and was placed on a three (3) month remediation plan. This remediation plan was completed successfully by Dr. Chaklanabis.

[3] Later in his residency program, Dr. Chaklanabis was diagnosed in April, 2013 with a previously unknown attention deficit disorder. He began treatment for his illness upon receipt of the diagnosis and treatment plan.

[4] In November of 2013, Dr. Chaklanabis was the subject of a letter written by a faculty member of the Psychiatry Department to its Program Director. In December, 2013, Dr. Chaklanabis was given a further education/remedial plan and was moved into a new rotation in January of 2014. On April 25, 2014, Dr. Chaklanabis was placed on a six (6) month remediation plan. At that time, Dr. Chaklanabis requested academic leave to catch-up on some outstanding paperwork, but that request was denied with the suggestion that he take vacation leave if he needed some time away.

[5] On June 20, 2014, Dr. Chaklanabis was placed on leave pending a "Fitness to Practice Assessment". Dr. Chaklanabis was determined to be fit for practice and resumed his

[1] LRB File No. 278-95

residency training on August 11, 2014. A further assessment of fitness to practice was requested on March 9, 2015.

[6] Dr. Chaklanabis pursued a number of appeals with respect to his status and fitness, but was unable to return to his residency program. During this process, his five (5) year funding agreement expired without his program having been completed. On July 4, 2016, Dr. Chaklanabis was advised by the Dean of the College of Medicine that as a result of the lapse of his funding that he was unable to continue in his program as a resident.

[7] Kristin Johnson, ("Johnson") the Chief Executive Officer for the RDS, testified on behalf of the Union. She testified regarding the numerous discussions and conversations which she had had with Dr. Chaklanabis and provided her notes with respect to the majority of those discussions and conversations.

[8] Johnson testified that she first met Dr. Chaklanabis on August 13, 2014. She testified that at that time she was unaware that Dr. Chaklanabis had been placed on a remediation program as the Resident Doctors do not get any notice or copies of such programs. Her notes from that meeting show the meeting dealt mainly with issues concerning his leave of absence and how that was being funded. She suggested that contact be made with Dr. Saxena regarding his leave of absence.

[9] Johnson met with Dr. Chaklanabis again on October 3, 2014. That meeting dealt with Dr. Chaklanabis' desire to appeal his remediation plan and to get accommodation for his disability.

[10] Johnson accompanied Dr. Chaklanabis to a meeting with *inter alia*, Dr. Saxena on October 9, 2014. That meeting discussed, among other things, opportunities for accommodative assistance for Dr. Chaklanabis.

[11] A meeting regarding accommodation for Dr. Chaklanabis was held on October 31, 2014 attended by Johnson and Dr. Chaklanabis. An accommodation plan was developed to provide assistance to Dr. Chaklanabis to achieve the remediation plan.

[12] Johnson met with Dr. Chaklanabis again on Feb. 26, 2015 with respect to an incident that occurred in the nursing lounge which gave rise to a complaint from a nurse to the

Nursing Director. As a result of this incident, Dr. Chaklanabis' remediation plan was converted to a probation plan.

[13] Dr. Chaklanabis contacted Johnson by telephone on Sept. 9, 2015. In the conversation, he requested advice concerning the process for appealing his probationary status and with respect to recommendations for legal counsel to assist him. He also noted that he was looking into transferring to a program at another University. He also asked if RDS had funding available to assist him with his legal costs. Johnson's notes indicate she advised him to speak to the Canadian Medical Protective Association.

[14] Johnson had another telephone meeting regarding Dr. Chaklanabis' probation and claims of workplace harassment on Oct. 28, 2015. During that conversation, she and Dr. Chaklanabis discussed his upcoming appeal hearing regarding the probationary plan as well as his work environment and his desire to relocate his training.

[15] During that same time period, Dr. Chaklanabis also filed a harassment/intimidation complaint under the terms of the U of S policy. In a meeting with Johnson on October 28, 2015, her notes indicate that Dr. Chaklanabis expressed the view that it was his work environment that was the problem, not himself. He seemed to feel that his illness was caused by or related to this work environment.

[16] Another meeting followed on Nov. 18, 2015. At that time, a hearing committee had been established, but they were still awaiting a hearing date. They again discussed the intimidation/harassment claim by Dr. Chaklanabis and his probation. Johnson's notes show that Dr. Chaklanabis intended to file an intimidation/harassment complaint with the U of S.

[17] On May 9, 2016, the Academic Adjudication Board ruled that they had found "no evidence that process irregularities had occurred" and dismissed Dr. Chaklanabis' appeal.

[18] On October 6, 2016, Dr. Chaklanabis again contacted Johnson seeking options for continuing his residency program following the cutting of his funding and release from the program and the denial of his appeal. Johnson responded that she had spoken to Dr. Saxena about the situation and that she was expecting a response shortly. She confirmed that reply on Oct. 11, 2016 to advise that the U of S would be contacting Dr. Chaklanabis to arrange an in-person meeting. That was the last contact she had with Dr. Chaklanabis until he filed his application with the Board on July 13, 2017.

[19] The Board heard evidence from both Dr. Chaklanabis and Johnson, some of which has been referenced above. Other aspects of their testimony will be referenced during the analysis portion of this decision, as necessary.

Relevant statutory provision:

[20] Relevant statutory provisions are as follows:

> ***Applications re breach of duty of fair representation***
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> ***6-60****(1)Subject to subsection (2), on an application by an employee or former employee to the board alleging that the union has breached its duty of fair representation, in addition to any other remedies the board may grant, the board may extend the time for the taking of any step in the grievance procedure under a collective agreement, notwithstanding the expiration of that time, if the board is satisfied that:*
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> *(a) the denial of fair representation has resulted in loss of employment or substantial amounts of work by the employee or former employee;*
>
> *(b) there are reasonable grounds for the extension; and*
>
> *(c) the employer will not be substantially prejudiced by the extension, either as a result of an order that the union compensate the employer for any financial loss or otherwise.*
>
> *(2) The board may impose any conditions that it considers necessary on an order made pursuant to subsection (1).*

Applicant's arguments:

[21] Dr. Chaklanabis argued that the probation plan that he received, and which ultimately lead to his funding being lost, should have been grieved by the RDS. He cited the Saskatchewan Court of Appeal decision in *University of Saskatchewan v. Professional Association of Internes and Residents of Saskatchewan*[2] in support of his contention that the action by the University was employment related and hence grievable by the RDS.

[22] He also argued that the RDS was arbitrary insofar as it considered the action of the U of S to be academic in nature which, as a result of this classification, they failed to properly investigate the action of the U of S or to file a grievance on his behalf. In support of his position, he cited this Board's decision in *Luchyshyn v. Amalgamated Transit Union, Local 615 and the City of Saskatoon*[3]

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[2] 2002 SKCA 75 (CanLII)
[3] 2010 CanLII 157 (SKLRB), 178 CLBRB (2d) 96, LRB File No. 035-09

Union's arguments:

[23] The RDS argued that the action by the U of S in respect of was "academic", and was, therefore, not grievable by it under the Collective Bargaining Agreement. They noted the particular characteristics of a medical resident as both an employee and a student and the separation that each of these functions entails.

[24] The RDS argued that it was not required to respond to the wishes of a particular employee. Nor is it required to encourage employees to file grievances. However, the RDS noted, that if they are asked to file a grievance, RDS should turn its mind to the merits of that grievance.

[25] The RDS cited the Saskatchewan Court of Appeal decision in *University of Saskatchewan v. Wilde*[4] in support of its argument that the actions of the U of S were academic and not employment related.

[26] Finally, the RDS argued that mistakes in judgment and mere negligence, if such had occurred, which it denied, did not amount to arbitrary conduct on the part of RDS, citing *Hargrave, Re:*[5], a decision of this Board.

Analysis:

[27] In dealing with the application for certification of the predecessor organization to the RDS, the Professional Association of Internes and Residents of Saskatchewan, then Chairperson, Bilson reviewed extensively the nature of the "employment" vs. "academic" nature of the residency program. The Board reached the conclusion at paragraph 79 that "…the residents who are represented by the Applicant organization are, for some purposes at least, employees within the meaning of *The Trade Union Act*".

[28] In the Court of Appeal's decision in *University of Saskatchewan v. Wilde*, the Court opened its reasoning by referring to its earlier decision in *University of Saskatchewan v. Professional Association of Internes and Residents of Saskatchewan*. It said at paragraph [18]:

> *[18] In University of Saskatchewan v. Professional Association of Internes and Residents of Saskatchewan, 2002 SKCA*

[4] 2008 SKCA 171, 305 D.L.R. (4th) 604, 314 Sask. R. 280, 174 A.C.W.S. (3d) 143
[5] 2003 S.L.R.B.R. No. 47, 2003 CanLII 62883 (SKLRB)

> *75 (CanLII), [2002] 10 W.W.R. 426, this Court considered the judicial review of an arbitration award in which the question was whether the essential character of the dispute between the parties was academic or employment related. Sherstobitoff J.A., writing for the Court, made the point that, while The Trade Union Act, R.S.S. 1978, c. T-17, and the collective agreement governed workplace issues, The University of Saskatchewan Act, 1995, S.S. 1995, c. U-6.1 and other authorities necessarily governed academic matters. He concluded that in these circumstances there is no reason to defer to the arbitration board's decision, because that decision involved not only an interpretation of the collective agreement but also an interpretation of the general law.*

[29] Here, we are also tasked with the responsibility to determine if the issues faced by Dr. Chaklanabis were academic in nature, as argued by the RDS, or if they were employment related. If employment related, then we must determine if the RDS breached its duty of fair representation to Dr. Chaklanabis?

Academic or Employment Related?

[30] The *Wilde* case began with a complaint made against Dr. Wilde by two (2) female laboratory technologists at Royal University Hospital. Both made formal complaints regarding Dr. Wilde's behaviors and interactions with them, including inappropriate physical proximity and attempts to touch, interference with personal movement (preventing one of the complainants from closing her car door), intrusive personal comments and an argumentative, belittling and mocking manner. An investigation found the complaints credible, but that they did not constitute harassment.

[31] The College of Medicine did not consider the investigator's report to be the end of the matter. Since Dr. Wilde had previously been warned about similar behavior, the College took the view that Dr. Wilde was not meeting the CanMEDS standards in professionalism and placed Dr. Wilde on probation. The Court noted that "[R]esidents may be placed on academic probation in accordance with the College's policy on probation".

[32] The Professional Association of Internes and Residents of Saskatchewan, as RDS was then known, filed a grievance on Dr. Wilde's behalf. The matter proceeded to arbitration and the arbitrator concluded that she had jurisdiction to hear the dispute. The U of S requested judicial review of the arbitratrator's decision. The Chambers Judge held that the essential character of the dispute was disciplinary and he confirmed the arbitrator's decision.

[33] On appeal to the Court of Appeal, they disagreed with the Chamber's Judge and allowed the appeal. At paragraph [30], the Court said:

> *[30] Finally, and for basically the same reasons, if the chambers judge concluded that the imposition of a probationary period on Dr. Wilde was grievable for reasons of fairness alone, he erred in so holding. This conclusion appears to have been based on the view of the chambers judge that Dr. Wilde had no right of appeal from that decision. With respect, even if that were the case, the matter does not fall to be determined under the collective agreement, for the reason already expressed. Grievability of an academic decision, particularly when, as here, that is tied to binding arbitration, is inconsistent with the academic autonomy necessary to the College's accreditation. The parties have negotiated the matters that are grievable. Of particular relevance here is the definition of "academic" in the collective agreement. Interpretation of the collective agreement must give effect to this fundamental purpose of excluding academic decisions from the scope of the agreement.*

[34] The current provision in the Collective Bargaining Agreement is Article 1.0 – RECOGNITION AND DEFINITION OF A RESIDENT. Article 1.1 reads as follows:

> *The Employer recognizes PAIRS as the sole and exclusive bargaining agent and representative of all Residents as defined in Article 1.5, training and working in Saskatchewan health care facilities, in matters* ***relative to the non-academic terms and conditions of training and employment*** *and, as well, for the purpose of negotiating and bargaining collectively and concluding collective agreements which set out those terms and conditions.* [emphasis added]

[35] The Collective Bargaining Agreement also contains a grievance procedure related to non-academic matters. Furthermore, Article 19.2 provides that grievances may only be filed with respect to "[S]uspension or dismissal from and academic program for non-academic reasons".

[36] There are potentially, four (4) issues that arise from this case. They are:

1. *The decision to place Dr. Chaklanabis on a remediation program in May 2014;*
2. *The decision to place Dr. Chaklanabis on probation in February, 2015;*
3. *The workplace harassment complaint by Dr. Chaklanabis in March 2016; and*
4. *The ending of Dr. Chaklanabis' residency program in July 2016 due to lack of funding.*

[37] While at first blush, the decision to place Dr. Chaklanabis on a remediation program in May 2014, could, potentially be an issue, it is not. That remediation program was not

challenged by him and was successfully completed by him. Even if it had been an issue, for the reasons that follow, I am of the opinion that the remediation program was “academic’ in nature and hence could not be the subject of a grievance filed by RDS.

[38] The decision to place Dr. Chaklanabis on probation in February, 2015 is the nexus for the application here. Dr. Chaklanabis argues that that probationary program should be considered as “employment” related and hence, grievable, and the RDS takes the view that it was “academic” in nature and was therefore, not grievable.

[39] The position espoused by RDS is, in my opinion, correct. The *Wilde* decision dealt with a similar “academic” probation. The probation of Dr. Chaklanabis was no different. It is clear that the probation was related not to employment matters, but rather professional competencies which the School of Medicine was seeking to correct. As noted by the Court of Appeal, academic matters are excluded from the grievance process.

[40] The issue that led to the probationary period was similar to the *Wilde* situation which involved, among other things, the CanMEDS standards in professionalism.

[41] It is also noteworthy that Dr. Chaklanabis availed himself of the opportunity to appeal the probation decision to the Academic Adjudication Board, which did not find that the probation decision should be varied.

[42] During the period between the implementation of the probation plan, Dr. Chaklanabis was on paid leave from his residency program. On several occasions, he indicated that he could return to his program, but chose to continue his appeal rather than return to his position. As time ran, so did his funding agreement, which ultimately expired resulting in his having no funding to continue his residency program.

[43] The workplace harassment complaint by Dr. Chaklanabis was also not a grievable matter. The complaint arose, not under the Collective Bargaining Agreement, but under the U of S policy related to respectful workplaces.

[44] In the Board's recent decision in *Lyle Brady v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 717*[6], there is no duty of fair representation incumbent upon a trade union with respect to legislative provisions related to harassment or policies regarding such issues. The duty can be engaged if the Union undertakes to represent the employee with respect to such provisions. At paragraph [50], the Board says:

> *Additional issues arise when there is a provision in a collective bargaining agreement that duplicates or provides additional avenues respecting complaints such as complaints involving a "respectful workplace" or "harassment" issues. Such complaints often trigger multiple jurisdictions and appeals under a collective agreement, OH & S legislation, Human Rights legislation and judicial processes. Again, however, the duty of care to be imposed on a union in such cases is outside the scope of this analysis.*

[45] In this case, the Union provided advice to Dr. Chaklanabis regarding his complaint, but did not undertake his representation regarding the complaint. They cannot be faulted for attempting to assist a member and providing advice to him as was done by Johnson.

[46] Finally, there is the issue of the ending of Dr. Chaklanabis' funding and his being discontinued as a resident for this lack of funding. Again, this is not an issue under the collective agreement which could be grieved. It is a requirement for the residency program that there be a funding source to enable the School of Medicine to provide the additional training component of the residency program. There may have been options available to Dr. Chaklanabis regarding a funding source, but, to repeat, tuition payments are not something that the RDS bargains for. They bargain only with respect to the wages and benefits payable to the Residents for their services to the health care providers for whom they provide medical care.

[47] I am of the opinion that the issues here are academic in nature. For the reasons that follow, the provisions of section 6-60 of the *SEA,* are not applicable to such decisions.

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[6] 2017 CanLII 85456 (SK LRB)

Academic Decisions are not grievable

[48] For the duty of fair representation to be engaged, the impugned conduct on the part of the Union must be conduct which arises from the Union's representation of an employee for the purposes of collective bargaining.

[49] In the Board's recent decision in *Brady v. Ironworkers, Local 771*[7], the Board extensively analyzed the changes to the duty of fair representation as currently enacted versus the former provisions and the origin of the duty. The decision also dealt peripherally with employee/union engagement in respect of other statutory schemes or employer policy issues.

[50] In that decision, the Board concluded that the duty of fair representation, as currently framed remained tied to the principles enunciated by the Supreme Court of Canada in its seminal decision in *Canadian Merchant Service Guild v. Gagnon*[8]. At paragraph [51], the Board says:

> In summary, to engage the duty of fair representation, the principles enunciated by the Supreme Court in *Gagnon* remain applicable. These are:
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> *1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.*
>
> *2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*
>
> *3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.*
>
> *4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*
>
> *5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.*

[51] The duty of fair representation creates a balance between the monopoly granted to the union to bargain collectively on behalf of its members and its ability to enforce and protect

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[7] 2017 CanLII 85456 (SK LRB), LRB File No. 130-15
[8] [1984] 1SCR 509, 1984 CanLII 18 (SCC)

those collectively bargained rights on one hand and the legitimate expectations of a member not to be treated arbitrarily, discriminatorily or have the union deal in bad faith by the union in the exercise of those rights. That legitimate expectation is tied, however, to "a collective bargaining agreement …".

[52] The *Wilde* decision is clear that academic issues are not grievable.[9] Academic issues do not flow from the collective agreement and are outside the control of the RDS. In this case, the RDS did assist Dr. Chaklanabis in his preparation for the appeals which he undertook, but they did not represent him in those proceedings.

[53] I am, therefore, of the opinion that the RDS had no obligation to assist Dr. Chaklanabis with respect to his academic issue and appeals in respect thereto. That they did try to assist is laudable, but does not attract the duty of fair representation to that activity. Accordingly, the application by Dr. Chaklanabis must be denied. An Order dismissing the application will accompany these reasons.

DATED at Regina, Saskatchewan, this **13th** day of **February, 2018.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson

[9] See paragraph [30] supra