



UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 2014, Applicant v UNITED CABS LIMITED OPERATING AS UNITED CABS AND BLUE LINE TAXI, Respondent

LRB File Nos. 114-17 and 177-17; June 17, 2019

Chairperson, Susan C. Amrud, Q.C.; Board Members: Maurice Werezak and Brenda Cuthbert

For the Applicant:
For the Respondent:

Heather M. Jensen
Larry F. Seiferling, Q.C.

Unfair labour practice application dismissed – employer established good and sufficient reasons for suspension, based on insubordination – no evidence that anti-union animus played any role in decision – no change in conditions of employment.

Unfair labour practice application dismissed – conditions under which taxicab owner can be affiliated with taxi broker are not related to employment – Board has no role in resolving that dispute.

REASONS FOR DECISION

Background:

[1] Susan C. Amrud, Q.C., Chairperson: This decision addresses two unfair labour practice applications filed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 2014 ["Union"] against United Cabs Limited operating as United Cabs and Blue Line Taxi ["United Cabs"].

[2] The first application alleges that the employment of taxicab driver Muhammad Imtiaz was effectively suspended or terminated, by the suspension of his dispatch system access rights, in whole or in part because of his union activity, contrary to clauses 6-62(1)(a), (b) and (g) of *The Saskatchewan Employment Act* ["Act"]¹.

¹ LRB File No. 114-17, filed June 14, 2017.

[3] The second application alleges that United Cabs refused to allow Mr. Imtiaz's taxicab to be operated through the dispatch system in whole or in part because of his union activity, contrary to clauses 6-62(1)(a), (b) and (g) of the Act².

[4] These matters turn almost entirely on the credibility of the witnesses. Direct evidence about the incidents that led to both of these applications being filed was provided to the Board by Mr. Imtiaz, Carlo Triolo, General Manager of the seven companies that constitute the United Group, including United Cabs and Tony Rosina, Manager of Support Services, who has worked for United Cabs for 45 years. The Board accepts Mr. Triolo's and Mr. Rosina's versions of what occurred.

[5] The road to certification in this workplace followed many twists and turns. It started on May 24, 2017, when the Union filed an application for certification³. That application was withdrawn and a union successorship application was filed on June 8, 2017⁴. An Interim Order was issued on June 22, 2017 declaring the Union to be the successor to the National Automotive, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada). On July 6, 2017, the successorship application was dismissed and the Interim Order rescinded. On July 11, 2017 the Union filed another certification application⁵. A vote was held and on July 28, 2017 the Report of Agent of the Board was issued indicating that of the 183 persons who voted, 104 supported the Union. A hearing was held before the Board in late 2017, and a certification order was issued on May 21, 2019. A number of issues alluded to in the applications under consideration in this decision were addressed in the decisions in those other cases.

LRB File No. 114-17

[6] The first incident, that led to the suspension of Mr. Imtiaz's dispatch system access rights, occurred on June 8, 2017. Mr. Triolo indicated that he had attended a meeting at the Saskatoon airport. When his meeting finished, he went out to talk to the United Cabs taxicab drivers who were waiting for fares at the United Cabs taxi stand. He started at the back of the line and moved forward, chatting with drivers along the way. One of the most important issues he addressed with them was the need for the drivers to comply with the dress code. All of the drivers who were not wearing a United Cabs' shirt acknowledged the requirement and agreed to start wearing it, except

² LRB File No. 177-17, filed September 6, 2017, amended September 11, 2017.

³ LRB File No. 087-17.

⁴ LRB File No. 110-17.

⁵ LRB File No. 137-17.

Mr. Imtiaz. He, on the other hand, told Mr. Triolo that he did not have to comply with the dress code. Both men were aware that other taxicab drivers were listening to their conversation. As Mr. Triolo tried to persuade him otherwise, Mr. Imtiaz insisted that he did not have to follow company policies, even when Mr. Triolo advised him that continued refusal would lead to his deactivation from the dispatch system. True to his word, later that day Mr. Triolo removed Mr. Imtiaz's ability to access the dispatch system. This meant he could not work. His access to the dispatch system was restored on June 20, 2017, after he signed the following document:

To: United Cabs

I, Muhammad Imtiaz, recognize that United Cabs has instituted a dress code policy and that this policy applies to me in the same manner as it applies to other drivers for United Cabs. I understand that United Cabs will give all drivers, including me, some leeway while obtaining the proper shirts, and that I will make efforts to obtain the proper shirts as soon as reasonably possible. I understand the dress code to be white, yellow or black collared shirt, preferably with the United Cab logo, and black pants and black shoes.⁶

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[7] The second incident concerned dispatch system access rights for Mr. Imtiaz's taxicab. It occurred on September 1, 2017. Mr. Imtiaz owns a seasonal taxi licence. Being a seasonal licence, *The Taxi Bylaw, 2014* of the City of Saskatoon ["bylaw"] does not allow the taxicab to be driven during July and August. Therefore, during that time United Cabs cannot allow the taxicab to be connected to its dispatch system. The licensee must turn in the seasonal taxi licence to the City immediately after June 30th, and the City will reissue the licence to the licensee on or about September 1st, provided its requirements are satisfied. Once United Cabs has documentation confirming that the seasonal taxi licence has been renewed, that the taxicab is properly registered and has up-to-date safety inspections, it can reconnect the taxicab to its dispatch system. Despite United Cabs' requests that Mr. Imtiaz bring in his documentation before September 1st, confirming these requirements had been met, he did not. He attended the United Cabs office on September 1st, but refused to provide them with the paperwork. His taxicab's access to the dispatch system was reinstated on September 13, 2017, after he provided them with the required paperwork in accordance with the Consent Interim Order issued by the Board that date, that ordered the following:

⁶ Exhibit E-1.

That Muhammad Imtiaz's Taxi cab (City License 521) be reinstated to the United Cabs Limited fleet immediately upon presentation by Muhammad Imtiaz to United Cabs Limited of the following:

- a. 2017 Temporary Seasonal Taxi (copy);
- b. SGI Plate Registration (copy);
- c. Current Safety Inspection; and
- d. A safety update and meter check on his vehicle at the meter check.⁷

Relevant statutory provisions:

[8] The following provisions are relevant to the determination of these applications:

Interpretation of Part

6-1(1) *In this Part:*

(a) "**bargaining unit**" means:

(i) a unit that is determined by the board as a unit appropriate for collective bargaining;

Unfair labour practices – employers

6-62(1) *It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*

(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Part;

(b) subject to subsection (3), to discriminate respecting or interfere with the formation or administration of any labour organization or to contribute financial or other support to it;

...

(g) to discriminate with respect to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including termination or suspension or threat of termination or suspension of an employee, with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in a proceeding pursuant to this Part;

...

(l) to declare or cause a lockout or to make or threaten any change in wages, hours, conditions or tenure of employment, benefits or privileges while:

(i) any application is pending before the board; or

(ii) any matter is pending before a labour relations officer, special mediator or conciliation board appointed pursuant to this Part;

...

(n) before a first collective agreement is entered into or after the expiry of the term of a collective agreement, to unilaterally change rates of pay, hours of work or other conditions of employment of employees in a bargaining unit without engaging in collective bargaining respecting the change with the union representing the employees in the bargaining unit;

...

(r) to contravene an obligation, a prohibition or other provision of this Part imposed on or applicable to an employer.

...

(4) For the purposes of clause (1)(g), there is a presumption in favour of an employee that the employee was terminated or suspended contrary to this Part if:

⁷ LRB File No. 178-17.

- (a) an employer or person acting on behalf of the employer terminates or suspends an employee from employment; and
- (b) it is shown to the satisfaction of the board or the court that employees of the employer or any of them had exercised or were exercising or attempting to exercise a right pursuant to this Part.

(5) For the purposes of subsection (4), the burden of proof that the employee was terminated or suspended for good and sufficient reason is on the employer.

...

(7) No employer shall be found guilty of an unfair labour practice contrary to clause (1)(d), (e), (f) or (n):

- (a) unless the board has made an order determining that the union making the complaint has been named in the certification order as the bargaining agent of the employees; or

- (b) if the employer shows to the satisfaction of the board that the employer did not know and did not have any reasonable grounds for believing, at the time when the employer committed the acts complained of, that:

- (i) the union represented the employees; or

- (ii) the employees were actively endeavouring to have a union represent them.

Argument on behalf of the Union:

[9] With respect to clause 6-62(1)(g) of the Act, the Union argues that subsection 6-62(4) applies here and therefore the onus is on United Cabs to establish that union activity played no role in the decision to discipline Mr. Imtiaz. This position is well-established by numerous cases cited by the Union. For example, they referred to the following passage in *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International Union v Comfort Cabs Ltd.*, 2014 CanLII 63998 (SK LRB), at paragraph 54:

However, even if the Board is satisfied that there were good and sufficient reasons for the actions that the employer took, the Board may nonetheless still find a violation has occurred if the Board is satisfied that the employer's actions were motivated, even in part, by an anti-union animus. See: The Newspaper Guild v. The Leader-Post, a Division of Armadale Co. Ltd., [1994] 1st Quarter Sask. Labour Rep. 242, LRB File Nos. 251-93, 252-93 & 253-93. Such is the case because there are few signals more intimidating for an employee or can send a more powerful message through the workplace than an indication that your employment relationship may be in jeopardy because of your support for a trade union. Therefore, even if an employer demonstrates a credible explanation for the actions it took, it is nonetheless a violation of the Act if we find that a component of the employer's decision-making process involved a desire to punish an employee because of his/her support for a trade union or to signal to other employees that unionization was undesirable. The difficulty in this task arises because seldom will an employer admit to an anti-union sentiment. Rather, the Board must be alert to sometimes subtle indications that improper motives have influenced an employer's actions. See: Saskatchewan Government & General Employees' Union v. Valley Hill Youth Treatment Centre Inc., [2013] 235 C.L.R.B.R. (2nd) 160, LRB File Nos. 024-13, 029-13, 030-13 & 031-13.

[10] The Union states that United Cabs has not provided good and sufficient reasons for its actions. It inconsistently applied the dress code to its taxicab drivers by enforcing it against Mr. Imtiaz but no one else. The Union argues that a refusal to comply with a policy that is not consistently applied in the workplace is not insubordination.

[11] The Union also argues that United Cabs changed the conditions of employment after it became aware of union activity in the workplace. The changes identified were enforcing the dress code and requiring seasonal taxi licence owners to file their seasonal taxi licence paperwork before their taxicab is reinstated to the dispatch system. United Cabs changed conditions of employment while a matter was pending before the Board, contrary to clause 6-62(1)(l), and after it knew its employees were engaging in organizing a union, contrary to clause 6-62(1)(n).

[12] Relying on *Canadian Union of Public Employees, Local 1486 v The Students' Union of the University of Regina Student Inc.*, 2017 CanLII 44004 (SK LRB) ["*URSU*"] the Union argues that the protection of clause 6-62(1)(n) applies as soon as an employer is aware its employees are actively attempting to organize. Whether United Cabs' practices comply with the bylaw is not the issue before the Board and is irrelevant to the determination of whether the conditions of employment were changed. Once an employer is aware of an organizing drive, the employer has a choice to either not change the conditions of employment or voluntarily bargain collectively. This interpretation, it argues, is supported by clause 6-62(7)(b).

[13] The Union pointed to *ABC Child Care Centre (Re)*, [1999] SLRBD No. 15 (SK LRB), paragraph 24, in support of this argument:

Section 11(1)(m) of the Act requires an employer to bargain changes with the "trade union representing the majority of employees in the appropriate unit." Before this section can apply, the employer must have knowledge of the union's claim to represent a majority of employees in the bargaining unit. This knowledge generally comes through the granting of a certification Order, although it is conceivable that an employer could possess such knowledge prior to the issuing of a certification Order.

[14] The Union states that whether the relationship between United Cabs and a taxicab owner is employment is irrelevant to the question before the Board. The issue is whether United Cabs or any other person discriminated or changed conditions of employment with a view to discouraging union activity.

Argument on behalf of United Cabs:

[15] With respect to clause 6-62(1)(g) and subsection 6-62(4), United Cabs argues that it had good and sufficient reasons for the actions it took in response to both incidents: the deactivation of Mr. Imtiaz's access to the dispatch system because he was refusing to comply with the dress code; and the delay in reactivating Mr. Imtiaz's taxicab pending the receipt of confirmation that his seasonal taxi licence had been renewed. Mr. Imtiaz's own actions were the sole cause of any alleged lost days of driving. Union activity by Mr. Imtiaz or any other employee played no role in either decision.

[16] United Cabs argues that Mr. Imtiaz is required by the bylaw to comply with the dress code and United Cabs is required by the bylaw to ensure he does:

Taxi Driver's Responsibilities

35(1) Every licensed taxi driver shall:

Driver Appearance and Behaviour

(a) At all times when operating a taxi, maintain a clean and properly groomed personal appearance, dressing appropriately to provide a public service as per the policy established by the taxi broker;

Taxi Broker's Responsibilities

30 Every licensed taxi broker shall:

Responsibility for Drivers

(o) ensure that taxi drivers affiliated with the broker maintain a clean and properly groomed personal appearance, dressing appropriately to provide a public service;

[17] Although the bylaw does not as succinctly set out United Cabs' responsibility with respect to taxicab owners, review of the bylaw confirms that a taxi broker must ensure that a valid taxi licence is in place for each taxicab that has access to its dispatch system.

[18] United Cabs denies that it changed conditions of employment when, in September 2017, it required taxicab owners with seasonal taxi licences to produce proper paperwork before it would reactivate their taxicabs. Due to delays in receiving information from some taxicab owners in previous years, it complied more carefully with the bylaw in September 2017 by requiring all taxicab owners, including Mr. Imtiaz, to produce the required paperwork before it would reactivate their taxicabs.

[19] During the period from September 1 and 13, 2017, Mr. Imtiaz was not suspended from driving. During this time period he could drive a different taxicab, as he could during July and

August. It was the taxicab, not Mr. Imtiaz, that was deactivated, therefore there was no suspension from employment.

[20] United Cabs also denied that it changed drivers' conditions of employment with respect to the dress code. A dress code has at all material times existed. The bylaw requires United Cabs to ensure that drivers meet a certain standard for dress. The policy is required by the bylaw. Mr. Triolo took an opportunity to talk to drivers about the dress code, an existing policy that United Cabs recognized was not being followed by everyone, to impress upon them the importance of complying with the policy.

[21] With respect to the interpretation of clause 6-62(1)(n) and subsection 6-62(7), United Cabs makes three arguments.

[22] First, as described above, it argues that there was no change to the conditions of employment.

[23] Second, it argues that the freeze period in clause 6-62(1)(n) only applies after certification, and not during an organizing drive. Unless there is an obligation to bargain collectively, there cannot be a freeze period, and there is no requirement to bargain collectively unless and until a certification order is granted⁸. This interpretation is reinforced by the reference in clause (n) to "employees in a bargaining unit"; "bargaining unit" is defined in clause 6-1(1)(a) to mean "a unit that is determined by the board as a unit appropriate for collective bargaining". In this case, the Board had not, at the applicable time, made such a determination.

[24] Third, contrary to what the Union submits, United Cabs is of the view that clause 6-62(7)(b) is not applicable. Since clauses (a) and (b) are joined by an "or", United Cabs only has to satisfy the Board that one of these situations exists to be able to take advantage of the defence provided by subsection (7).

[25] United Cabs also defends its actions with respect to the first incident as an appropriate response to Mr. Imtiaz's defiant and insolent attitude. It relied on *United Steelworkers, Local 7656 v Mosaic Potash Colonsay ULC*⁹ and *British Columbia Railway v Canadian Union of*

⁸ *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Regina Exhibition Association Limited*, [2001] Sask LRBR 615 (SK LRB).

⁹ Dated March 29, 2014 (Chad-Smith), unreported.

Transportation Employees, Local 6¹⁰, in support of its argument that insubordination in the workplace is a serious matter that should not be tolerated and has even been found to be a reasonable ground for termination.

[26] United Cabs raised an argument that it characterized as “work now, grieve later”. In other words, if there is a disagreement on a workplace rule, the proper process is to continue to work as if the rule applies, and to challenge the rule through the proper steps such as a grievance process.

Analysis and Decision:

[27] The Union cited many of the clauses in subsection 6-62(1) in its applications. However, it focused its evidence and argument on clauses (g), (l) and (n).

[28] The Board will first consider the Union’s arguments with respect to clause (g). In these unfair labour practice applications, the onus is on the Union to prove its allegations. However, with respect to clause (g), subsection 6-62(4) reverses the onus. To obtain the benefit of subsection 6-62(4) for Mr. Imtiaz, the Union needs to prove that:

- (a) United Cabs suspended Mr. Imtiaz from his employment; and
- (b) employees of United Cabs or any of them had exercised or were exercising or attempting to exercise a right pursuant to Part VI of the Act.

[29] It is undisputed that, at the time of both of these incidents, Mr. Imtiaz and other employees of United Cabs were exercising or attempting to exercise their rights under Part VI. The Union filed an application for certification with respect to a unit of taxi drivers at United Cabs on May 24, 2017. Therefore, this is the latest date on which United Cabs can be said to have been aware of its employees’ union activity. This is more than two weeks before the first incident.

[30] With respect to the second incident, Mr. Imtiaz’s rights as an employee were not engaged. It was his rights as a taxicab owner that were in issue. He continued to be able to access the dispatch system as a driver. He was not suspended from his employment. The Board has no role in resolving disputes between United Cabs and taxicab owners. This means that the application respecting the second incident, LRB File No 177-17, is dismissed.

¹⁰ 1982 CarswellBC 2655.

[31] With respect to the first incident, Mr. Imtiaz was suspended from his employment. Therefore, with respect to that incident, United Cabs has a very high standard to meet. It must prove that union activity played no part in its decision to suspend Mr. Imtiaz. It is not enough to demonstrate a defensible business reason for the decision.

[32] Both parties referred the Board to *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Sakundiak Equipment (WGI Westman Group)*, 2011 CanLII 72774 (SK LRB), which made the following comments respecting the interpretation of clause 11(1)(e) of *The Trade Union Act* (now clause 6-62(1)(g) of the Act):

[101] In the Moose Jaw Exhibition case, supra, the Board quoted from para. 123 of its decision in Saskatchewan Government Employees Union v. Regina Native Youth and Community Services Inc. as follows:

It is clear from the terms of Section 11(1)(e) of the Act that any decision to dismiss or suspend an employee which is influenced by the presence of trade union activity must be regarded as a very serious matter. If an employer is inclined to discourage activity in support of a trade union, there are few signals which can be sent to employees more powerful than those which suggest that their employment may be in jeopardy. The seriousness with which the legislature regards conduct of this kind is indicated by the fact that the onus rests on the employer to show that trade union activity played no part in the decision to discharge or suspend an employee.

[102] In United Steelworkers of America v. Eisbrenner Pontiac Asuna Buick Cadillac GMC Ltd. the Board made this observation about the significance of the reverse onus found in s. 11(1)(e) of the Act. In that decision, the Board outlined two elements that the Board must consider as follows:

When it is alleged that what purports to be a layoff or dismissal of an employee is tainted by anti-union sentiment on the part of an employer, this Board has consistently held, as have tribunals in other jurisdictions, that it is not sufficient for that employer to show that there is a plausible reason for the decision. Even if the employer is able to establish a coherent and credible reason for dismissing or laying off the employee...those reasons will only be acceptable as a defence to an unfair labour practice charge under Section 11(1)(e) if it can be shown that they are not accompanied by anything that indicates that anti-union feeling was a factor in the decision.

[33] The Board found no evidence that the suspension was motivated by anti-union animus. Mr. Triolo's evidence made it clear that the suspension was caused entirely by Mr. Imtiaz's insubordination. Insubordination is a serious matter in the workplace. Mr. Imtiaz's actions were unacceptable and his employer cannot be faulted for taking disciplinary action against him in response. As soon as Mr. Imtiaz acknowledged that the dress code applied to him in the same manner as it applies to other drivers, his access to the dispatch system was reinstated.

[34] The next argument the Union raised was that United Cabs contravened clause 6-62(1)(n). It argues that United Cabs changed the conditions of employment by deciding to enforce the dress code. Clause (n) applies when conditions of employment of “employees in a bargaining unit” are changed. Clause 6-1(1)(a) of the Act defines “bargaining unit” to mean “a unit that is determined by the board as a unit appropriate for collective bargaining”. In this matter, the Board had not, at the applicable time, made such a determination. The Board did not make a determination that the taxicab drivers were employees, or that they constituted a unit appropriate for collective bargaining, until May 21, 2019. Clause 6-62(1)(n) does not apply to this incident because, at the time it occurred, no union represented employees in a bargaining unit in this workplace.

[35] *URSU* does not lead to a conclusion that clause 6-62(1)(n) applies in this matter:

[65] This Board’s jurisprudence under section 11(1)(m) of the *TUA* consistently held that the freeze became effective once a certification Order is issued.

...

[69] In the *SEA*, the statutory freeze is found in subsection 6-62(1)(n). Although its language differs from subsection 11(1)(m) of the *TUA*, on close reading these differences are subtle and reveal little, if any, substantive difference between the two (2) provisions. For this reason, the Board’s jurisprudence analyzing section 11(1)(m) “provides helpful guidance in the application of s. 6-62(1)(n) of [the *SEA*]. See especially: *Securitas Canada Ltd.*, *supra*, at paragraph 47.

...

[71] The first thing to observe is that unlike the general opening language in section 11(1)(m), *i.e.* “where no collective bargaining agreement is in force”, the opening language in under subsection 6-62 (1)(n) is more specific. It refers to situations where a union has been certified but a first collective agreement has not been achieved under 6-24, and also to situations where the term of a collective agreement has expired but a renewal of the collective agreement under subsection 6-26 has not been concluded. This clarifies that under the *SEA* the statutory freeze operates in circumstances other than during the collective bargaining period of a first collective agreement.

[72] Second, the term “bargaining unit” in section 6-62(1)(n) clarifies that the union in question must be certified as the bargaining agent for the employees in question. Simply put, a certification Order appears to be pre-condition to the operation of the statutory freeze.

[36] The Board does go on in that case, in *obiter*, to opine that the defence in subclause 6-62(7)(b)(ii) would not be available to an employer that knew that an organizing drive was taking place in its workplace. Whether that is a reasonable interpretation is an issue for another day. In this matter it is not necessary for the Board to consider subsection 6-62(7). United Cabs does not

need to establish a defence, as the Union has not proven the unfair labour practice. United Cabs did not change its conditions of employment at the applicable time. United Cabs has had a dress code for at least 45 years. It gave its drivers notice in 2016 that it intended to more firmly enforce it, commencing June 1, 2017, as part of its response to pending competition by transportation network companies like Uber and Lyft. This evidence was reinforced by Union evidence that United Cabs' intention to more firmly enforce the dress code was one of the reasons the taxicab drivers decided to pursue certification. The Union therefore has not proven that a change in conditions of employment occurred that would invoke clause (n).

[37] A change in conditions of employment is also a necessary prerequisite for the Union to prove an unfair labour practice under clause 6-62(1)(l). Given that no change in conditions of employment occurred, that allegation has also not been proven.

[38] The Union has not proven that United Cabs committed any of the unfair labour practices alleged in LRB File No. 114-17.

[39] Accordingly, both applications are dismissed.

[40] The Board thanks the parties for the comprehensive oral and written arguments they provided, which the Board has reviewed and found helpful. Although not all of the numerous arguments and authorities raised have been addressed in these Reasons, all were considered in making this decision.

[41] This is a unanimous decision of the Board.

DATED at Regina, Saskatchewan, this **17th** day of **June, 2019**.

LABOUR RELATIONS BOARD

Susan C. Amrud, Q.C.
Chairperson