

SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant v GAIL LOCKSTEAD and GOVERNMENT OF SASKATCHEWAN, Respondents

LRB File No. 156-20; May 19, 2021

Chairperson, Susan C. Amrud, Q.C.; Board Members: Phil Polsom and Allan Parenteau

For Saskatchewan Government and General
Employees' Union:

Crystal L. Norbeck

For Gail Lockstead:

No one appearing

Dismissal for want of prosecution granted – Board receives no response to numerous communications over 15-month period – Union receives no response to repeated requests for particulars over 12 months – No response filed to application to dismiss.

REASONS FOR DECISION

Background:

[1] **Susan C. Amrud, Q.C., Chairperson:** Gail Lockstead applied¹ to the Board for an Order finding that her union, Saskatchewan Government and General Employees' Union ["SGEU"], has been or is engaging in a contravention of section 6-58 or 6-59 of *The Saskatchewan Employment Act* ["Act"]. SGEU has now applied² for an Order striking that application on the basis that Lockstead has abandoned her claim or, in the alternative, summarily dismissing it on its merits.

[2] In October and November 2019, SGEU was carrying out meetings with a view to obtaining ratification by its members of a tentative collective agreement it had entered into with the Government of Saskatchewan. On October 31, 2019, during the course of that process, SGEU suspended the membership of several members, including Lockstead, who, it alleged, were being disruptive to the process. The suspensions were carried out pursuant to a provision in the SGEU Constitution that allows for suspensions pending investigation in extenuating circumstances. Lockstead and one other member³ whose memberships were suspended filed applications with the Board. Lockstead's application objects to her suspension, on the following basis:

¹ LRB File No. 255-19. The initial application was filed November 15, 2019 and alleged a contravention of section 6-59. An amended application was filed on February 11, 2020 and alleged a contravention of section 6-58.

² LRB File No. 156-20. The Respondent, Government of Saskatchewan, did not file a Reply or participate in this matter.

³ *Arlen Nickel v Saskatchewan Government and General Employees' Union*, 2021 CanLII 13612 (SK LRB).

I received a registered letter from the union stating that I was no longer a member in good standing following a complaint that had been made against me. There was no indication of what the complaint was, nor when the investigation would take place or be completed.

[3] Following the suspensions, SGEU appointed an investigator to investigate the allegations against the members, including Lockstead. The investigator released his report on May 4, 2020, recommending that the suspensions be lifted. SGEU accepted the recommendations. Lockstead's membership was reinstated on May 14, 2020.

[4] Despite numerous attempts to contact her and provide for her application to be heard, by both the Board and SGEU's counsel, Lockstead has failed to respond to any communications respecting her application or this matter since she filed her amended application on February 11, 2020. This matter was considered at Motions Day on April 6, 2021. Despite having received notice by registered letter that this matter would be considered on that date, Lockstead did not appear. The Board directed that SGEU's application be decided on the basis of written submissions. Lockstead received a copy of SGEU's submissions and was given an opportunity to provide her own submissions in response.

Argument on behalf of SGEU:

[5] SGEU argues, first, that the application should be dismissed for want of prosecution. It refers to *Saskatchewan Joint Board Retail, Wholesale and Department Store Union and Retail, Wholesale and Department Store Union, Local 568 v Off the Wall Productions Ltd.*⁴ [*Off the Wall Productions*] as establishing that the Board has authority to make such an Order. In its view, that decision speaks to the importance of both respect for the Board's resources and fairness to a party confronted with a complaint by a party who does not make any effort to advance it. SGEU argues that Lockstead's failure to respond to communications from it and the Board are evidence that she has abandoned her claim.

[6] In the alternative, SGEU argues that the application should be summarily dismissed as it does not establish an arguable case of a contravention by SGEU of either section 6-58 or 6-59 of the Act.

[7] It argues that the following passage from *Roy v Workers United Canada Council*⁵ is equally applicable to this matter:

⁴ 2009 CanLII 2603 (SK LRB).

⁵ 2015 CanLII 885 (SK LRB) at para 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.*

[8] With respect to section 6-58, SGEU relies on *Arlen Nickel v Saskatchewan Government and General Employees' Union*⁶. As noted above, that decision applies to Lockstead's co-worker, who was treated in the same manner as she was, in the same circumstances. The Board found:

[34] Determining whether any right to be heard was required in the circumstances facing the Provincial Council in late October of 2019 requires a consideration of several factors. First, any opportunity for a hearing given to the applicant would also have to be given to the other fifteen respondents, with the consequent additional delays that would arguably make the process untenable. Secondly, loss of union privileges for a limited period pending an investigation, while a serious matter, should not be equated with loss of employment status. Finally, I accept that the union leadership believed it was following the requirements established by the constitution.

[35] In these circumstances, it was not unreasonable for the Provincial Council to suspend the respondents without affording an opportunity to be heard. Therefore, I conclude that the applicant was not denied his right to the application of the principles of natural justice based on his not being given a hearing before the suspension was imposed.

The Board also found that Nickel's suspension did not constitute an act of discrimination contrary to subsection 6-58(2) of the Act.⁷

[9] SGEU argues that, as Lockstead's allegations are substantially the same as those made by Nickel, that decision indicates that the issues raised by Lockstead do not establish an arguable case of a contravention of section 6-58. There is no basis to distinguish that decision. Lockstead's complaint raises substantially the same arguments as were rejected in that decision.

⁶ Supra, note 3.

⁷ At para 40.

[10] With respect to section 6-59 of the Act, SGEU relies on *University of Saskatchewan Faculty Association v R.J.*⁸ which found as follows:

[62] The duty of fair representation relates to matters between the Union member and the Employer, not between the Union member and another Union member or between the Union member and the Union.

[75] . . . The Union does not have a duty to represent a member on a matter that falls outside the collective agreement or Part VI. Nor is the Union obliged, pursuant to section 6-59, to fairly represent members in relation to matters that are internal to the Union.

Since the application filed by Lockstead relates to issues between Lockstead and SGEU, rather than between Lockstead and her employer, section 6-59 does not apply.

Argument on behalf of Lockstead:

[11] Lockstead did not file a reply to SGEU's application for an Order striking her application on the basis that she has abandoned her claim or, in the alternative, summarily dismissing it on its merits. She provided no submissions in response to the written submissions that SGEU filed.

Relevant Statutory Provisions:

[12] The Board considered the following provisions of the Act in this matter:

Internal union affairs

6-58(1) Every employee who is a member of a union has a right to the application of the principles of natural justice with respect to all disputes between the employee and the union that is his or her bargaining agent relating to:

- (a) matters in the constitution of the union;*
- (b) the employee's membership in the union; or*
- (c) the employee's discipline by the union.*

(2) A union shall not expel, suspend or impose a penalty on a member or refuse membership in the union to a person, or impose any penalty or make any special levy on a person as a condition of admission to membership in the union if:

- (a) in doing so the union acts in a discriminatory manner; or*
- (b) the grounds the union proposes to act on are that the member or person has refused or failed to participate in activity prohibited by this Act.*

Fair representation

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.

Powers re hearings and proceedings

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

⁸ 2020 CanLII 57443 (SK LRB).

- ...
- (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.

Analysis and Decision:

[13] The Board has determined that Lockstead's application will be dismissed for want of prosecution. The information provided by SGEU and the information on the Board file lead to no other conclusion than that Lockstead has abandoned her claim. It has been approximately 15 months since she last responded to communications from the Board. She has not responded to any communications from SGEU's counsel respecting her claim. We are left to assume that, with her membership in SGEU reinstated, she has obtained the remedy she was seeking through her application.

[14] The Board adopts the determination in *Off the Wall Productions* that clauses 6-111(1)(p) and (q) of the Act⁹ provide the Board with authority to dismiss an application for want of prosecution. In deciding whether it is appropriate to grant such an order in this matter, the Board took into consideration that Lockstead should not see her application dismissed except in a clear and obvious case and in accordance with due process. SGEU, on the other hand, has the right to expect that a claim that is not advanced within a reasonable time, or that involves issues that appear to have been satisfactorily settled, will not later re-emerge.¹⁰

[15] The Board is satisfied that Lockstead has received due process in this matter. The Board wrote to her on numerous occasions requesting her participation in the advancement of her application. Since February 2020, all of these communications have been met with silence. In addition, SGEU's counsel wrote to Lockstead three times asking for information respecting the remedy she was seeking in her application. Again, there was no response. SGEU served Lockstead with its application to strike her claim, and with the written submissions it filed in support of this application. She has not provided the Board with any argument respecting why SGEU's application should not be granted.

[16] Given this determination, it is unnecessary for the Board to consider SGEU's alternative request that Lockstead's application be summarily dismissed on the basis of establishing no arguable case.

⁹ These provisions are the successors to clauses 18(p) and (q) of *The Trade Union Act*, which the Board was considering in that matter.

¹⁰ At paras 14 and 15.

[17] Accordingly, with these Reasons an Order will issue dismissing Lockstead's application.

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

DATED at Regina, Saskatchewan, this **19th** day of **May, 2021**.

LABOUR RELATIONS BOARD

Susan C. Amrud, Q.C.
Chairperson