

SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant v D.C., Respondent and GOVERNMENT OF SASKATCHEWAN, Respondent

LRB File Nos. 011-22 and 083-21; March 24, 2022

Vice-Chairperson, Barbara Mysko (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act*)

Counsel for the Applicant, Saskatchewan

Government and General Employees' Union: Rick A. Engel, Q.C.

For the Respondent, D.C.:

No submissions made

Counsel for the Respondent, Government of Saskatchewan:

Curtis W. Talbot, Q.C.

Application for Summary Dismissal – Underlying Duty of Fair Representation Application – Want of Prosecution – Underlying Application Dismissed – No Arguable Case.

REASONS FOR DECISION

[1] Barbara Mysko, Vice-Chairperson: These are the Board's Reasons for Decision in relation to an application filed by SGEU [Union] requesting summary dismissal of an underlying duty of fair representation application filed by D.C. against the Union on July 6, 2021. SGEU filed the application to summarily dismiss on February 1, 2022, asking for consideration by written submissions. After receiving the application from SGEU, the Board set deadlines for further submissions, with the final submissions due on March 18, 2022. The Board has received and reviewed the submissions filed and has decided to grant the application for summary dismissal for the following reasons.

[2] In the underlying application, D.C. relies on section 6-59 of *The Saskatchewan Employment Act* [Act]. D.C., who is a former employee of the Government of Saskatchewan [Employer], claims that the Union breached its duty of fair representation when it did not advocate on his behalf or file a grievance in relation to his termination. He had been hired on a term contract to begin on January 31, 2021 with an end date of January 30, 2022. His employment was terminated on May 12, 2021. He was provided with seven days' pay in lieu of notice in accordance with the collective bargaining agreement. He asked the Union to file a grievance on his behalf. The Union informed him that the collective bargaining agreement permitted the termination with appropriate notice, which he was provided.

[3] SGEU has brought this application pursuant to ss. 6-103(2), 6-111(1)(p), and 6-111(1)(q) of the Act. In support of this application, SGEU states that D.C. has no intention to pursue this application, as demonstrated by the following events:

- a. D.C. filed his complaint on July 5, 2021;
- b. SGEU filed its reply on July 29, 2021;
- c. D.C. attended a Motions Day conference call on September 7, 2021. D.C. advised that he had returned to his home in New Brunswick, and it would be difficult for him to attend the pre-hearing conference in person. The Board scheduled a virtual pre-hearing conference for October 19, 2021 from 1 pm to 6 pm (SK time).
- d. Shortly before the pre-hearing conference on October 19, 2021, D.C. emailed the Board Registrar to request a postponement. He apologized for the short notice. The Registrar adjourned the conference.
- e. The matter was returned to the Motions Day schedule. On December 7, 2021, D.C. did not attend. As a result of the no-show, the Board adjourned the matter to the January Motions day.
- f. On January 12, 2022, D.C. did not attend. Counsel for the SGEU stated that he wished to make an oral application for dismissal for want of prosecution. The Board advised that the application would have to be made in writing.

[4] In addition to the foregoing, D.C. did not file a reply to the application for summary dismissal or attempt to file any further written submissions by the deadline that was provided by the Board.

[5] Clauses 6-111(1)(p) and (q) of the Act are most relevant to the determination of this application:

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;

[6] The Board has authority, pursuant to these provisions, to proceed in appropriate circumstances to dismiss an application without an oral hearing. The Board in *Siekawitch v*

Canadian Union of Public Employees, Local 21, 2008 CanLII 47029 (SK LRB), at pages 4-5, explained:

The above provisions, which came in to force in Saskatchewan in 2005, originated in The Canada Labour Code, Part I, have been considered by several cases in the Federal jurisdiction. Those cases are clear authority for the proposition that the Board may proceed, in appropriate circumstances, to dismiss an application without an oral hearing where the documents provided on the application show there is either a lack of evidence or no arguable case. Those documents, which form a part of the record such as the Application and Reply, can be supplemented by reports of investigations conducted by the Board or written submissions of the parties.

[7] Next, an application should be summarily dismissed only when it is patently defective, or in a clear and obvious case: *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB).

[8] The authority to dismiss an application summarily extends to cases in which there is a want of prosecution, or in other words, a failure to proceed with the case. In *SJRWDSU, Local 568 v Off the Wall Productions Ltd.*, 2009 CanLII 2603 (SK LRB), the Board found that it has authority to summarily dismiss for want of prosecution, without an oral hearing, on the basis that there is no arguable case, pursuant to clauses 6-111(1)(p) and (q) of the Act.

[9] More recently, in *SGEU v Gail Lockstead and Government of Saskatchewan*, 2021 CanLII 43555 (SK LRB), the Board confirmed that clauses 6-111(1)(p) and (q) of the Act give the Board this authority. The Board outlined the principles to consider in deciding whether to dismiss for want of prosecution:

[14] The Board adopts the determination in Off the Wall Productions that clauses 6-111(1)(p) and (q) of the Act[9] 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]

[10] The Board is satisfied that this is a clear and obvious case for dismissal and that D.C. has received due process in relation to his application. For context, pre-hearing conferences are the first step in the process of resolving a duty of fair representation complaint. Since the filing of the application in July 2021, almost nine months has passed and there has been no progress on the file, despite multiple attempts to launch the process.

[11] Since he requested an adjournment (last minute) of the pre-hearing conference, D.C. has received notice but has failed to appear at two Motions Day dates that were set aside for the

purpose of rescheduling the pre-hearing conference. As a result, there has been no rescheduling of the pre-hearing conference. The pre-hearing conference has not occurred.

[12] When D.C. was notified that the first Motions Day had been adjourned, the Board warned him about the consequences of not attending the next scheduled date, and provided him with a phone number that was also a direct line:

Further to Motions Day on Tuesday, December 7, 2021 at 10:45 am, the Board has adjourned the scheduling of this matter to Motions Day on Wednesday, January 12, 2022 due to the Applicant not being in attendance. Should the Applicant not be present by telephone on January 12, 2022, to speak to scheduling same, this Employee Union Dispute may be determined in their absence. To avoid this happening, the Board expects the Applicant to be in contact with the Board prior to the next Motions Day.

We trust this is satisfactory, but should you have any question[s] or concern[s], please do not hesitate to contact this office at [...]

[13] D.C. was advised that his application could be determined in his absence. He did not reach out to the Board or attend the subsequent Motions Day. Then, this application was filed on February 1, 2022. D.C. was provided with notice of this application on the same day. The purpose of this application, being to dismiss the duty of fair representation application for failure to pursue it, was made clear on its face. There has been no communication from D.C. since that time. He has not filed a reply or filed any written submissions. D.C. was made aware that the application for summary dismissal would be decided by written submissions.

[14] D.C. has been given sufficient opportunity to participate in the proceedings or to advise of his intention to proceed. He has provided no explanation for his absences. This is a clear and obvious case for dismissal.

[15] For these reasons, this is an appropriate case to grant the requested order to summarily dismiss. The application in LRB File No. 083-21 is dismissed.

[16] An appropriate order will accompany these Reasons.

DATED at Regina, Saskatchewan, this **24th** day of **March, 2022**.

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson