Saskatchewan
Labour Relations Board

NORMAN BLUNT, Applicant and INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS, LOCAL 110, Respondent

LRB File No. 100-22; July 28, 2022
Vice-Chairperson, Barbara Mysko (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act*)

Counsel for the Applicant, Norman Blunt: Daniel S. LeBlanc

Counsel for the Respondent, International Association of Heat and Frost Insulators and Allied Workers, Local 110: Greg D. Fingas

Interim Application – Underlying Employee-Union Dispute – Sections 6-4 and 6-58 of *The Saskatchewan Employment Act* – Interim Application Dismissed.

Balance of Convenience Favours Union – Application Rests on Compensable Harm – Concern Primarily Financial – Significance of Union Disciplinary Process.

REASONS FOR DECISION

Background:

[1] Barbara Mysko, Vice-Chairperson: These are the Board's Reasons for Decision in relation to an application for interim relief brought pursuant to clause 6-103(2)(d) of *The Saskatchewan Employment Act* [Act]. The main application is an employee-union dispute alleging a breach of sections 6-4 and 6-58 of the Act, in LRB File No. 097-22. The Applicant, Norman Blunt, is a member of the International Association of Heat and Frost Insulators and Allied Workers, Local 110. He is also a member of the British Columbia Regional Council of Carpenters.

[2] The employee-union dispute pertains to inter-local charges that were preferred against the Applicant and to the ensuing proceedings that resulted in his being found guilty of violating two provisions of the International's Constitution. The charges alleged that the Applicant was doing work for Brock Oilfield Services Ltd. at the Co-op Refinery in Regina within the Insulators' jurisdiction, pursuant to a dispatch through the Carpenters and that he had therefore participated in assisting the Carpenters steal the jurisdictional work of the Insulators' trade.

[3] The General Executive Board imposed a $15,000 penalty on the Applicant. He wishes to appeal the guilty finding and the penalty, however, he is required to pay the penalty to be eligible to file an appeal of his conviction. He has not paid. The deadline to appeal was July 7, 2022. Due to the deadline, and to provide the Board with time to consider the matter, the hearing of this interim application was originally scheduled to be heard on June 27, 2022. Prior to that date, the parties sought a consent adjournment of the hearing, which was granted. In the meantime, the parties agreed to an extension of the deadline to pay the penalty to July 15, 2022. Through this application, the Applicant seeks a toll on the 30-day appeal period for the internal appeal and a stay of the discipline decision.

[4] The hearing of the interim application proceeded on July 11, 2022. Counsel for the parties filed briefs of law and made oral arguments at the hearing of the matter. At the conclusion of the hearing, the Board reserved its decision. On July 14, 2022, the Board issued an order dismissing the application for interim relief and informed the parties that its written reasons would follow. These are the Board’s written Reasons for Decision for issuing that order.

Evidence:

[5] The Applicant’s allegations, and the facts that he relies upon in support of his allegations, are summarized in his affidavit:

> *2. At all relevant times, I have been a member of both the respondent Insulators and the British Columbia Regional Council of Carpenters (the "Carpenters'). I am a member of Insulators' Local 110, working out of Edmonton. Insulators Local 119 covers Insulators' work in and around Regina.*
>
> *3. On or about June 18, 2020 the Carpenters and Stock Canada Oilfieid Services Ltd. ("Brock") entered a Project Labour Agreement (the "Agreement') for certain work at the Co-op Refinery Complex in Regina (the “Refinery”). I am aware of this because my lawyer, Dan LeBlanc told me.*
>
> *4. On or about June 26, 2020, the Carpenters dispatched me to work pursuant to the Agreement. A copy of my dispatch slip is attached to my Affidavit and marked as Exhibit A.*
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> *5. By letter dated December 10, 2020, I was made aware of charges laid against me arising out of my work pursuant to the dispatch to the Co-op Refinery. I was not advised of the hearing date at that time. Rather, I was told only that the matter would be heard “at the next scheduled General Executive Board meeting. You will be notified at a later date, when and where the next General Executive Board meeting is scheduled to convene." A copy of the December 10, 2020 letter is attached to my Affidavit and marked as Exhibit B.*
>
> *6. On June 2, 2021, my former lawyer wrote to the Insulators requesting "all particulars, Information, and documents relied on by Local 119 in bringing these charges, whether these are in the possession of the International or in the possession of Local 119.” A copy of this letter is attached to my Affidavit and marked as Exhibit C. To the best of my*

knowledge, my former lawyer never provided a substantive response to the charges and the Insulators did not respond to this letter.

7. I was initially advised of the hearing date of the Charges by letter dated March 21, 2022. The hearing into matters which occurred at the Refinery in Regina were to be heard 2,300 kilometres away in Windsor, Ontario on Monday, May 9, 2022 (the "Hearing"). A copy of this letter is attached to this Application and marked as Exhibit D. On my review, this letter advised that any further reply which I may have "must be received in my office no later than Thursday, April 14, 2022."

[8.] […][1] reasons including the absence of particulars. (emphasis added)

9. I am advised by my counsel and do believe that he never provided a substantive response to the charges [against] me.

10. By letter dated April 15, 2022, counsel for the Respondent denied both requests made on April 11, 2022. A copy of that letter Is attached to this application and marked as Exhibit F. The letter does not raise any concerns with my lawyer's attendance at the Hearing,

11. On approximately April 24, 2022, I received a further document package from the Insulators. A copy of that package is attached to my Affidavit and marked as Exhibit G. I acknowledge that this package contains adequate particulars of the charges against me. However, these sufficient particulars were provided 10 days after the deadline to provide any reply materials, as described in Exhibit D, above.

12. On May 9, 2022, my lawyer attended the Hearing in Windsor. He was not advised what time the Hearing was to begin. By email dated May 9, 2022, counsel for the Insulators advised my lawyer that "The hearings are about to start. You should get there as soon as possible" and "Please wait until your case is called. They will come out and get you." A copy of counsels' May 9, 2022 email exchange Is attached to this application and marked as Exhibit H. I am aware of these emails because my lawyer showed them to me.

13. My lawyer was denied participation in the Hearing. He was advised of this by way of telephone call from counsel for the Insulators on May 9. I am aware of this because he advised me. The Hearing proceeded in the absence of my lawyer.

14. The Insulators' explanation of the process by which counsel was excluded is in the May 10, 2022 email attached to this application and marked as Exhibit I. On the morning of the Hearing the Hearing tribunal "voted to adhere to its consistent policy of limiting representation at such hearings to good standing members" (i.e. lawyers are not permitted entry). This purportedly consistent policy had not been communicated to me before May 9, 2022.

15. On June 1, 2022, the Hearing tribunal issued its discipline decision (the "Decision"). A copy of the Decision is attached to this application as Exhibit J. A copy or the Decision was provided directly to me; my lawyer was not provided a copy. The Insulators provided a physical copy of the Decision rather than using an Instantaneous communication medium; I received the Decision on or about June 6. The Decision indicates that I breached Article XIX, Section 9 and Article XXIV, Section 1 (b) by "failing to report to Local 119 that you would be working in its jurisdiction." A fine of $15,000 was imposed.

16. On my review, the Decision indicates that if I do not pay the $15,000 fine within 30 days my membership with the Insulators will automatically "lapse".

[1] Filed affidavit missing content of paragraph 8.

17. On my review, the Decision indicates that I may appeal it "to the next convention". My understanding is that Insulators' conventions occur only every five years and that the next convention is scheduled to take place in 2027.

18. On my review, the Decision indicates that "full payment of the fine imposed is a condition of any such appeal". I understand that in order to internally appeal to the 2027 convention I must provide the $15,000 within 30 days of receiving the decision.

[6] By letter, dated June 1, 2022, the Applicant was informed that he had been found guilty of violating Article XIX, Section 9 and Article XXIV, Section 1(n) by failing to report to Local 119 that he would be working in its jurisdiction. These provisions state:

Article XIX, Section 9

[…] Such members must conform to the working rules and trade agreements of the local union in whose jurisdiction they work, and, upon request of the local union business manager, must provide proof of payment in conformity with such trade agreements. Such members must also notify the business manager of their home local unions and the business manager of the local union in whose jurisdiction they will be working, before work has started, and whenever work has been interrupted, resumed, or completed. [...]

Article XXIV, Section 1(n)

Engaging in any act or acts which are contrary to the member's responsibility toward the International Association or any of its local unions as an institution, or which interfere with the performance by the International Association or a local union of its legal or contractual obligations.

[7] The letter ended with the following two paragraphs:

For the violation found, the GEB imposed a penalty of $15,000 (Canadian).

Failure to pay the fine, or any required portion thereof, within thirty (30) days after its due date shall result in automatic lapsing which will not relieve the responsibility of paying any financial obligation incurred while a member, including but not limited to dues, assessments, and fines.[]

Please note that this decision may be appealed to the next convention, but that, pursuant to Article XXV, Section 10 of the Constitution and Bylaws, any such appeal must be filed with my office within 30 days of the date of this decision, and full payment of the fine imposed is a condition of any such appeal.

[8] The Union filed an affidavit sworn by Robert Kurnick, General Counsel of the International. In it, Mr. Kurnick explains that the charges were preferred by the Executive Board of Local 119 on October 15, 2020. The Applicant had and took the opportunity to respond to the charges. It was the General Executive Board that made the decision finding the Applicant guilty of violating two provisions.

[9] Mr. Kurnick also suggests that the Applicant's evidence contains some inaccuracies. Specifically, he suggests that contrary to paragraph 9 of the Applicant's affidavit, the former lawyer for the Applicant did provide a response to the charges and that response was considered by the General Executive Board, and, contrary to paragraph 17 of that same affidavit, the Convention is to occur not in 2027 but from August 22 to 24, 2022 in Detroit, Michigan.

Argument on Behalf of the Applicant:

[10] There is an arguable case that, due to the Insulators' unsatisfactory internal appeal process, the Board should assume jurisdiction over the appeal of the discipline.

[11] In principle, the Union has disciplined the Applicant for accepting work from another union. In doing so, the Union has interfered with his right to join or assist unions, contrary to section 6-4. The Union has also imposed a penalty on him in a discriminatory manner, contrary to subsection 6-58(2). The related discipline process offended the principles of natural justice, contrary to subsection 6-58(1): the Applicant was denied his right to counsel; the discipline decision lacked transparency and intelligibility; and the Union failed to provide particulars to the Applicant before his reply materials were due.

[12] Given the significant interests at stake, the requirements of procedural fairness fall on the high end of the spectrum. If the Applicant does not pay the penalty he will lose his membership in the Union.

[13] The present application is about preserving the *status quo* and ensuring that the discipline decision can be determined on its merits. The appeal period for the internal appeal will have expired before the Board hears and determines the main application. The expiry of the appeal period will irreparably harm the Applicant's right to have the matter determined on its merits. This is an irreparable, intangible loss.

[14] The balance of convenience favours the Applicant. If he fails to pay the fine, he will lose membership in the Union. Loss of membership will result in obvious financial harm, but also in intangible and difficult-to-quantify harms, including psychological harm. Any financial loss he suffers will be difficult to quantify. In comparison to the Union, the Applicant is less able to bear the loss of $15,000.

Argument on Behalf of the Union:

[15] On the basis of the appeal process alone, the main application is fatally flawed for prematurity.

[16] Furthermore, the Applicant is attempting to evade the operation of the International's Constitution by seeking to avoid making a payment required to preserve his right of appeal.

[17] The discipline decision does not affect the Applicant's ability to earn a livelihood; it just requires him to pay a penalty. It does not affect his membership or, in turn, his employment prospects. Nor, given his membership in another trade union, is the Applicant relying entirely on his membership with the Insulators to earn a livelihood.

[18] More fundamentally, the Applicant's only asserted harm is financial; he does not assert irreparable harm. The harm he asserts is entirely speculative. Neither his membership nor his employment prospects are affected pending the hearing of an appeal. In fact, the remaining appeal process suggests that any asserted harm is entirely reparable. The only impact on the Applicant pending an appeal is the requirement to make payment of the penalty imposed upon him. This is not irreparable harm.

[19] In contrast to the absence of harm to the Applicant, the harm to the Union from granting the requested order would be substantial. The order would result in the Applicant receiving special treatment compared to other individuals who are subject to the Union Constitution.

Legislative Provisions:

[20] The following provisions of the Act are applicable:

> ***6-4**(1) Employees have the right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing.*
>
> *(2) No employee shall unreasonably be denied membership in a union.*
>
> *…*
>
> ***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.

…

***6-103**(2) Without limiting the generality of subsection (1), the board may do all or any of the following:*

. . .

(d) make an interim order or decision pending the making of a final order or decision.

[21] The following provisions of *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021* ["Regulations"] are also applicable:

***15**(1) An employer, union or other person that intends to apply to the board for an interim order or decision pursuant to clause 6-103(2)(d) of the Act shall file:*

(a) an application in Form 12 (Application for Interim Relief);

(b) an affidavit of the applicant or other witness in which the applicant or witness identifies with reasonable particularity:

(i) the facts on which the alleged contravention of Part VI of the Act, the regulations made pursuant to Part VI of the Act or an order or decision of the board is based, including referring to any provision of the Act or regulations that is alleged to have been contravened;

(ii) the party against whom the interim relief is claimed; and

(iii) any exigent circumstances associated with the application or the granting of the interim relief;

(c) a draft of the order sought by the applicant in Form 13 (Draft Interim Order); and

(d) any other material that the applicant considers necessary for the purposes of the application.

(2) Subject to subsection (3), every affidavit filed pursuant to clause (1)(b) must be confined to those facts that the applicant or witness is able of the applicant's or witness's own knowledge to prove.

(3) If the board is satisfied that it is appropriate to do so because of special circumstances, the board may admit an affidavit that is sworn or affirmed on the basis of information known to the person swearing or affirming the affidavit and that person's belief.

(4) If an affidavit is sworn or affirmed on the basis of information and belief in accordance with subsection (3), the source of the information must be disclosed in the affidavit.

(5) Before filing an application pursuant to this section, the applicant shall contact the registrar and, on being contacted, the registrar shall set a date, time and place for the hearing.

(6) On being notified pursuant to subsection (5) of the date, time and place of the hearing, the applicant shall serve a copy of the application and all other material mentioned in

subsection (1) on the party against whom the interim relief is claimed at least 3 business days before the date set for the hearing.

(7) Before the hearing, the applicant shall file with the board proof of service of the application and the material mentioned in subsection (1) in accordance with subsection (6).

Analysis:

[22] In *Saskatchewan Government and General Employees' Union v Saskatchewan (Government)*, 2010 CanLII 81339 (SK LRB), the Board described its test on an application for interim relief:

[30] Interim applications are utilized in exigent circumstances where intervention by the Board is thought to be necessary to prevent harm from occurring before an application pending before the Board can be heard. Because of time constraints, interim applications are typically determined on the basis of evidence filed by way of certified declarations and sworn affidavits without the benefit of oral evidence or cross-examination. As such, the Board is not in a position to make determinations based on disputed facts; nor is the Board able to assess the credibility of witnesses or weigh conflicting evidence. Because of these and other limitations inherent in the kind of expedited procedures used to consider interim applications, the Board utilizes a two-part test to guide in its analysis: (1) whether the main application raises an arguable case of a potential violation under the Act; and (2) whether the balance of convenience favours the granting of interim injunctive relief pending a hearing on the merits of the main application. . . . As with any discretionary authority under the Act, the exercise of the Board's authority to grant interim or injunctive relief must be based on a sound labour relations footing in light of both the broad objectives of the Act and the specific objectives of the section allegedly offended.

[31] In the first part of the test, the Board is called upon to give consideration to the merits of the main application but, because of the nature of an interim application, we do not place too fine a distinction on the relative strength or weakness of the applicant's case. Rather, the Board seeks only to assure itself that the main application raises, at least, an "arguable case". . . .. The Board has also used terms like whether or not the applicant is able to demonstrate that a "fair and reasonable" question exists (which should be determined after a full hearing on the merits) to describe this portion of the two-part test. . . . . Simply put, an applicant seeking interim relief need not demonstrate a [probable] violation or contravention of the Act as long as the main application reasonably demonstrates more than a remote or tenuous possibility.

[32] The second part of the test – balance of convenience - is an adaptation of the civil irreparable harm criteria to the labour relations arena. . . . In determining whether or not the Board ought to grant interim relief prior to a full hearing on the merits of an application, we are called upon to consider various factors, including whether or not a sufficient sense of urgency exists to justify the desired remedy. . . . The Board will also balance the relative labour relations harm that is anticipated to occur prior to the hearing of the main application without intervention by the Board compared to the harm that could result should a remedy be granted. . . . In assessing the relative labour relations harm, the Board is particularly sensitive to the potential for irreparable or non-compensable harm. . . . [citations removed]

[23] The first part of the test asks whether the main application raises an arguable case of a potential violation under the Act. In assessing the potential for an arguable case, the Board considers whether the main application discloses facts which, if established at the full hearing,

would prove a breach of the Act. This is not a rigorous standard. The Board accepts the affidavit evidence on its face, and refrains from making credibility assessments or from drawing final conclusions on the facts.

[24] The Applicant has the onus to establish that the test for interim relief has been satisfied.

Arguable Case:

[25] The Applicant argues that the Union has interfered with his right to join or assist unions, contrary to section 6-4; has imposed a penalty on him in a discriminatory manner, contrary to subsection 6-58(2); and has breached his right to the application of the principles of natural justice, contrary to subsection 6-58(1). The Applicant focuses on the last of these three arguments.

[26] The Applicant suggests that he is subject to discipline as a direct result of having accepted a dispatch from another union. He relies on *Lalonde v United Brotherhood of Carpenters and Joiners of America, Local 1985*, 2004 CanLII 65627 (SK LRB) [*Lalonde*] for the principle that it is not permissible for a union to expel a union member for the sole reason of holding concurrent membership in another union. He suggests that this principle extends to discipline, more generally, and asserts that he has been disciplined because of his accepting the dispatch, and therefore, because of his membership in another union.

[27] The Applicant argues that the content of procedural fairness is context-dependent, and asserts that the disciplinary hearing could, and did, have serious consequences.[2] As a result, the requirements of procedural fairness fall on the high end of the spectrum. If the Applicant does not pay the exorbitant penalty he will lose his membership in the Union.

[28] The Union argues that the discipline decision has no bearing on the Applicant's right to join or assist a union pursuant to section 6-4. Nor is there any validity to the suggestion that the Union has breached the principles of natural justice. The Union says that the Applicant has not disputed having received written, specific charges; notice of the hearing; an opportunity to appear and be represented by another member; or particulars of the case against him. This case does not justify procedural safeguards in addition to those that are usually required – the discipline does not affect his membership in the International or Local 110.

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[2] *Pidmen v Canadian Union of Public Employees, Local 1975-01*, 2005 CanLII 63108 (SK LRB), at para 46; *Makuch v CUPE*, 2019 CanLII 86847 (SK LRB), para 70.

[29] In *Walsh v International Association of Heat & Frost Insulators & Allied Workers, Local 119*, 2009 CanLII 84839 (SK LRB) [*Walsh*], the Board considered the rules of natural justice that apply to a union in a dispute with a member:

> *[57] In Lalonde, supra, this Board cited with approval the following articulation of the rules of natural justice that may be implied by a labour relations board into the constitution of a trade union in dealing with disputes between a member and his/her union articulated by the British Columbia Labour Relations Board in the case of Coleman and Leaney v. Office and Technical Employees' Union, Local 378, [1995] BCLRB No. 282/95:*
>
> > *1. Individual members have the right to know the accusations or charges against them and to have particulars of those charges.*
> >
> > *2. Individual members must be given reasonable notice of the charges prior to any hearing.*
> >
> > *3. The charges must be specified in the constitution and there must be constitutional authority for the ability to discipline.*
> >
> > *4. The entire trial procedure must be conducted in accordance with the requirements of the constitution; this does not involve a strict reading of the constitution but there must be substantial compliance with intent and purpose of the constitutional provisions.*
> >
> > *5. There is a right to a hearing, the ability to call evidence and introduce documents, the right to cross-examine and to make submissions.*
> >
> > *6. The trial procedures must be conducted in good faith and without actual bias; no person can be both witness and judge.*
> >
> > *7. The union is not bound by strict rules of evidence; however, any verdict reached must be based on actual evidence adduced and not influenced by any matters outside the scope of the evidence.*
> >
> > *8. In regard to serious matters, such as a suspension, expulsion or removal from office, there is a right to counsel.*

[30] In considering whether the application discloses an arguable case, the Board does not prejudge the matter except to the extent necessary to answer that question.

[31] The foregoing passage from *Walsh* suggests that the Applicant has an arguable case that the Union has breached section 6-58. In this case, any closer or searching assessment of the merits will be best left to the substantive hearing.

[32] The Applicant has also suggested that the Board should assume jurisdiction over the appeal because of the Insulators' unsatisfactory internal appeal process. In making this argument, the Applicant misstates the Board's role in applications brought pursuant to section 6-58. The Board cannot assume jurisdiction it does not have. In *Lalonde*, the Board described its role

pursuant to what was then the applicable legislation, being section 36.1(1) of the since-repealed *Trade Union Act*:

> *The Board's supervision of those matters is further confined to determining whether the member has been afforded the right to the application of the principles of natural justice, as opposed to considering the merits or perceived correctness of the decision by the union.*[3]

[33] The Board does not re-hear disputes between a union and its member or hear appeals of decisions arising from disputes between a union and its member. Instead, the Board considers whether the member has been afforded the right to the application of the principles of natural justice, pursuant to subsection 6-58(1).

[34] With respect to subsection 6-58(2), the Board's role is to consider and determine whether a union has imposed a penalty on a member (or taken other action captured by subsection (2)) in a discriminatory manner or on the grounds that the member has refused or failed to participate in prohibited activity.

[35] Any remedy ordered, if a breach is found, is dependent on the circumstances.

Balance of Convenience:

[36] The second part of the test asks whether the balance of convenience favours the granting of interim relief pending a hearing on the merits of the main application. In deciding this question, the Board considers whether there is a sufficient degree of urgency to grant the requested relief, on an interim basis, pending the hearing of the merits, and weighs the relative labour relations harm that is anticipated to occur prior to the hearing of the main application. In assessing the relative labour relations harm, the Board is particularly sensitive to the potential for irreparable harm. Irreparable harm is that which cannot be compensated through an award of damages.

[37] The question of whether there is urgency is related to the deadline for the appeal of the discipline decision (by agreement), being July 15, 2022. The Applicant suggests that, if not tolled, the appeal period will expire before the substantive matter is heard and decided. If the Board dismisses his application, he will have lost his right to appeal.

[38] The alleged harm is described in the Applicant's brief:

> *36. If Mr. Blunt's interim application is denied, he will lose membership in the Insulators. This will occur through non-payment of the improperly-imposed fine while the appeal is*

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[3] *Lalonde*, at paragraph 88.

> *being considered. It is unclear whether the Respondent would ever allow Mr. Blunt back into the union. Lost union membership comes with obvious financial harm, but also with intangible and difficult-to-quantify harms including [the] psychological benefit of knowing that one has a source of work. Further, even insofar as the benefit is strictly financial, it would be difficult to calculate the quantum of any loss.*

[39] There is an obvious flaw in the Applicant's argument, as follows. It is the Applicant who pays or does not pay the fine. Only if he is impecunious, if the payment would cause him hardship, or if he chooses not to pay despite having the ability to pay will the fine not be paid. This fact means that it is necessary to determine whether the Applicant is impecunious or whether the payment would cause him hardship. However, there is no evidence before the Board to this effect. There is no evidence at all about his financial circumstances or about his ability to pay. To the contrary, for what it is worth, there is evidence that the Applicant holds membership in two trade unions, including the Carpenters Union, and at least until the timeframe in question, was accepting dispatches from the Carpenters Union.

[40] Without evidence that the Applicant will, at least, struggle to make the payment of the penalty imposed, the Board cannot conclude that he will not be able to make the payment or will suffer as a result of making or having made the payment. If the Board cannot conclude that the Applicant will not pay due to such circumstances, it cannot conclude that he will, in turn, lose his union membership and that he will suffer the harms that might arise with the loss of such membership. All of the other alleged harms flow from a failure to pay. The Board cannot simply assume, in the absence of any evidence, that the Applicant is unable to pay the penalty. It is a relatively high quantum, but the word "relative" is operative and underlines the need for evidence.

[41] On the other hand, the Board does not accept the Union's argument that, if the Applicant does not pay, there is no immediate risk of expulsion. In suggesting that any expulsion decision will be subject to additional procedural protections, the Union relies on a provision of the Constitution the reference to which is not found in the Union's discipline letter. In that letter, the Union stated that failure to pay the fine "shall result in automatic lapsing", a quotation which mirrors language in a different provision. The evidence before the Board is that the Union officials have communicated that an automatic lapse is the consequence of non-payment.

[42] The Applicant suggests that the Board can take judicial notice of the fact that, as an individual, the Applicant is less likely to be able to bear the loss of his own money than the Union, as an organization, is able to bear the absence of money that it does not currently have. The

Board agrees that, as far as the loss of the quantum, on its own, is a relevant harm, the Applicant is likely to be more impacted by its loss than is the Union by its absence.

[43] Still, this observation does not account for irreparable harm, that is, harm that is not compensable in damages. The Board's decision must have some regard for that issue. The Union has conceded that both the appeal body and the Board have the authority to order the Union to compensate the Applicant for the payment of the fine. The Board is left to conclude that the harm posed to the Applicant is entirely reversible.

[44] In considering this application, the Board has noted with interest the conclusion of a much earlier case, *Lightfoot v Gerecke, Elliot and Walker*, 1983 CanLII 2358 (SK QB) [*Lightfoot*]. In *Lightfoot*, the Court considered an application for an injunction restraining the defendants from taking actions on a disloyalty finding until the trial of the action was heard. The defendants' primary position in objecting to the application was that it was premature. The Court found that if the plaintiff did not pay the assessment he could be expelled from the union. The Court concluded that if the injunction was not granted the plaintiff would suffer irreparable harm and that the balance of convenience favoured the plaintiff.

[45] In *Lightfoot*, there was no assessment of the evidentiary concern that the Board has discussed. The Board has to infer from this absence that the evidentiary issue was not considered or not in contention. In the current case, this issue is squarely before the Board. It is necessary for the Board to address it.

[46] Furthermore, it should also be noted, that the Board, in its balance of convenience analysis, weighs the relative labour relations harm that is anticipated to occur prior to the hearing of the main application. This was not done in *Lightfoot*. On this issue, the Union argues that the Applicant acted contrary to the Union's interests, is subject to a discipline decision in relation to that conduct and is now seeking to stall the payment of the fine and the appeal process that would normally occur within a few weeks, in August. Although not wholly decisive in this application, the Board does place weight on maintaining the integrity of the Union's internal disciplinary process.

[47] As an aside, the Court in *Lightfoot* also found that the plaintiff had a strong *prima facie* case, in accordance with what was then the applicable standard. In assessing whether the plaintiff had a strong *prima facie* case, the Court found, on the basis of the evidence, that the union had failed to comply with an Article in its Constitution that required it to proceed with the trial within a

specific timeframe and found that the notice given the plaintiff and the time to prepare for trial were inadequate.

[48] Lastly, the Board does not agree with the Union's argument that the interim relief sought by the Applicant is premature because there is another process available to allow the Applicant to vindicate his rights. The packaging around this argument is all too neat for the messy reality of the situation at hand. Prematurity alone is not decisive in a case such as this where at least some of the Applicant's complaints could extend to the appeal process itself. For similar reasons, the prematurity argument was also rejected in *Lightfoot*.

[49] This last, unrelated point, however, does not change the Board's conclusion that the balance of convenience weighs in favour of the Union, for the reasons it has set out. The application for interim relief has, therefore, been dismissed. The Order to this effect has been granted and issued. The main dispute, LRB File No. 097-22, has been placed on the Motions Day schedule in August to set a date for a hearing.

[50] The Board thanks the parties for their oral and written submissions, all of which the Board has reviewed and found very helpful.

DATED at Regina, Saskatchewan, this **28th** day of **July, 2022.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson