Saskatchewan
Labour Relations Board

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 248-P, Applicant v TODD ANTHONY STAMPER, Respondent, and MAPLE LEAF FOODS INC., Respondent

LRB File Nos. 033-23 and 049-23; May 10, 2023
Chairperson, Michael J. Morris, K.C. (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*

Counsel for the Applicant, United Food and Commercial Workers Union, Local 248-P:	Gary L. Bainbridge, K.C.
The Respondent, Todd Anthony Stamper:	Self-represented
Counsel for the Respondent, Maple Leaf Foods Inc.:	Dan J. Shields

Application for summary dismissal – Employee-union dispute – Clause 6-111(1)(p) of *The Saskatchewan Employment Act* – Employee's application discloses no arguable case – Application for summary dismissal granted.

REASONS FOR DECISION

Background:

[1] Michael J. Morris, K.C., Chairperson: These are the Board's reasons regarding an application by United Food and Commercial Workers Union, Local 248-P [Union] to summarily dismiss an application by Todd Anthony Stamper [Mr. Stamper] alleging an employee-union dispute. Mr. Stamper's application was filed on February 23, 2023. Apart from filing his application Mr. Stamper has not participated in the proceedings, and he did not file a reply to the Union's application for summary dismissal. Mr. Stamper's former employer, Maple Leaf Foods Inc. [MLF], has not actively participated in the proceedings.

[2] Mr. Stamper's application states that the circumstances giving rise to an alleged contravention of *The Saskatchewan Employment Act* [Act] are his "entire employment history". He alleges that the Union has been engaging in a contravention of "all" sections of Act, and lists alleged contraventions including "mail tampering (conflict of interest in court setting)", "wrongful dismissal from posting (sanitation)", being "singled out because of workload", "being charged with not abiding by doctor's note while working with sanitation", "being assaulted on maple leaf grounds" by a manager, circumstances involving Mr. Stamper having made a harassment

complaint against an MLF human resources manager, and a complaint about cameras being used to enforce a masking policy.

[3] In terms of remedies sought, Mr. Stamper's application lists "take ownership of wrongdoings by MLF & Union, charge according to the law, any monetary value on this, I put in the hand of my lawyer or judge or judecator (*sic*) who is familiar with case or cases like this" and "most important, closure".

[4] The Union's reply notes that Mr. Stamper retired from MLF on September 1, 2022, after being employed for approximately 24 years. The Union states that the whole of Mr. Stamper's application constitutes "a screed against the actions of [MLF]" and does not plead any facts supporting a breach of the Union's duty of fair representation[1] or a breach of the principles of natural justice in the context of Union-imposed discipline or membership issues.[2] Further, the Union states that the remedies sought in Mr. Stamper's application are not within the Board's jurisdiction. Finally, the Union notes that there has been excessive delay in bringing the application before the Board, and that some of the allegations were before the Board in 2015 in an application that was withdrawn by Mr. Stamper. According to the Union, the events described in the application occurred from 2012 to 2021.

Argument on behalf of the Union for summary dismissal:

[5] The Union submits that Mr. Stamper's application does not plead an arguable case against it and may be dismissed as patently defective, in accordance with the principles in *Roy*.[3] The Union also requests that the application be dismissed on the basis of undue delay, noting Mr. Stamper has raised dated allegations and provided no explanation whatsoever for his delay within his pleadings. Further, the Union submits that the application may be dismissed based on the Board's lack of jurisdiction to order the remedies sought, or because some of the allegations were contained in a previous application that Mr. Stamper withdrew following a pre-hearing conference with the Board in 2015.[4] More particularly, that application included the allegations regarding mail tampering, wrongful dismissal from the sanitation posting, wrongful discipline for not abiding by medical restrictions, and assault by a manager.

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[1] Per s. 6-59 of the Act.
[2] Per s. 6-58 of the Act.
[3] *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB) [*Roy*], at paras 8-9.
[4] LRB File No. 170-15.

Analysis and Decision:

[6] The Union's application relies on clauses 6-111(1)(o) and (p) of the Act:

> ***6-111(1)*** *With respect to any matter before it, the board has the power:*
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> *…*
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> *(o) to summarily refuse to hear a matter that is not within the jurisdiction of the board;*
>
> *(p) to summarily dismiss a matter if, in the opinion of the board, there is a lack of evidence or no arguable case;*

[7] An application that pleads no arguable case may be summarily dismissed pursuant to clause 6-111(1)(p), in accordance with the principles in *Roy*:

> *1. In determining whether a claim should be struck as disclosing no arguable case, the test is whether, assuming the applicant is able to prove everything alleged in his/her claim, there is no reasonable chance of success. The Board should exercise its jurisdiction to strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.*
>
> *2. In making its determination, the Board may consider only the subject application, any particulars furnished pursuant to demand and any document referred to in the application upon which the applicant relies to establish his/her claim.*[5]

[8] Simply put, if it is plain and obvious that the application will fail even if the applicant proves everything they allege, the application should be dismissed on the basis that it is patently defective.[6]

[9] Here, the Board is satisfied that Mr. Stamper's application pleads no arguable case against the Union, and agrees with the Union's characterization of it as "a screed against the actions of MLF". First, there is no indication that the application involves an internal dispute between Mr. Stamper and the Union which could involve a breach of s. 6-58 of the Act.[7] Second, the application does not plead facts which could establish a breach of the Union's duty of fair representation under s. 6-59 of the Act. The Union is not alleged to have failed to represent Mr. Stamper with respect to his rights under a collective agreement or under Part VI of the Act, nor to

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[5] *Roy*, at para 8.
[6] *Saskatchewan Polytechnic Faculty Association v Ha*, 2023 CanLII 30423 (SK LRB), at para 20.
[7] Section 6-58 imposes a duty on a union to abide by the principles of natural justice in disputes between the employee and the union relating to matters in the constitution of the union, the employee's membership in the union, or the employee's discipline by the union.

have acted in in an arbitrary, discriminatory or bad faith manner in failing to do so. The Board finds the following comments from *Roy* to be apposite:

> ***[14]*** *… while the Applicant has alleged wrong doing on the part of the Employer, none of the facts asserted by the Applicant support a finding that the Union has breached its duty to fairly represent her. In fact, reading the Applicant's application would not lead the reader to believe that Ms. Roy has any dispute with the conduct of the Union or the representation she has received (other than she has named the Union as a respondent). The facts that the Applicant has alleged in her application involve complaints as to the conduct of her employer; not the Union. It is not axiomatic that inappropriate or unlawful conduct on the part of an employer implies a failure to represent on the part of a trade union. As this Board has noted in many cases, while the exclusive right to represent a unit of employees imposes many obligations on a trade union, there is no obligation on a trade union to guarantee that a particular result will be achieved or undesirable consequence will be avoided in the workplace. To establish an arguable case of a contravention by the Union, the Applicant must allege some specific acts or omissions on the part of the Union (and/or its agents) that support the conclusion that it has failed to satisfy the obligations imposed upon it; something the Applicant has failed to do.*[8]

[10] Based on Mr. Stamper's application pleading no arguable case, it is dismissed pursuant to clause 6-111(1)(p). While not strictly necessary, the Board will make some brief comments regarding the Union's other arguments.

[11] The Board agrees that there has been undue delay in the filing of Mr. Stamper's application. Tolerable delay tends to be measured in months, not years.[9] Based on the facts attested to in the Union's reply, the allegations involve events that took place between 2012 and 2021. Mr. Stamper has not provided any evidence to suggest otherwise or any explanation for his delay in filing, including in reply to the Union's summary dismissal application. In these circumstances, the Board would be inclined to find that the delay has been excessive and prejudicial to the Union,[10] and to dismiss Mr. Stamper's application on the basis of undue delay pursuant to clause 6-111(1)(q), without requiring an oral hearing. As identified by the Court in *Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers (United Brotherhood of Carpenters and Joiners of America, Local 1985) v Saskatchewan Labour Relations Board,* 2011 SKQB 380, at para 108, the power to decide a matter without an oral hearing (s. 6-111(1)(q)) is a distinct power from the power to summarily dismiss a matter due to lack of evidence or no arguable case (s. 6-111(1)(p)). Whether the Board is comfortable exercising its authority under s. 6-111(1)(q) will depend on the specific circumstances before it.

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[8] *Roy*, at para 14.
[9] *Hartmier v Saskatchewan Joint Board Retail Wholesale and Department Store Union and Retail, Wholesale and Department Store Union, Local 955,* 2017 CanLII 20060 (SK LRB) [*Hartmier*], at para 123.
[10] Prejudice is presumed in cases of delay; the longer the delay, the greater the presumed prejudice to a respondent: *Hartmier*, at para 120.

[12] The Union is also correct in highlighting that the remedies sought in Mr. Stamper's application appear to be outside of the Board's jurisdiction. For example, the Board does not lay charges under s. 6-123 of the Act[11] or otherwise, and the application's reference to a monetary award being at the discretion of Mr. Stamper's lawyer, a judge or an adjudicator clearly does not contemplate a remedy within the Board's authority.

[13] The Board acknowledges the Union's concern with Mr. Stamper's application bringing forward allegations which he had previously withdrawn in 2015. Aside from the issue of delay, if the allegations were withdrawn as part of a resolution agreed between the parties at a pre-hearing conference with the Board, resiling from such a resolution by refiling the allegations could amount to an abuse of process.

[14] The result of these reasons is that Mr. Stamper's application is dismissed pursuant to s. 6-111(1)(p). An appropriate order will be issued.

DATED at Regina, Saskatchewan, this **10th** day of **May, 2023.**

LABOUR RELATIONS BOARD

Michael J. Morris, K.C.
Chairperson

[11] *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, Local 568 v Signal Industries (1998) Saskatchewan Ltd.*, 2020 CanLII 10511 (SK LRB), at para 22.