Saskatchewan
Labour Relations Board

BRYAN FRASER, Applicant v SASKATCHEWAN PUBLIC SAFETY AGENCY, Respondent

LRB File No. 052-23; August 3, 2023
Vice-Chairperson, Barbara Mysko; Board Members: Shawna Colpitts and Grant Douziech

For the Applicant, Bryan Fraser:	Self-Represented
Counsel for the Respondent, Saskatchewan Public Safety Agency:	Curtis W. Talbot, K.C.

Application for Contravention Order – Sections 6-104 and 6-123(1)(e) of *The Saskatchewan Employment Act* – Failure to Comply with Board Order – Request for Monetary Relief Withdrawn – Claim for Declaration – Issue Raised is *de Minimus* – No Labour Relations Purpose – Relief Denied – Application Dismissed.

REASONS FOR DECISION

Background:

[1] Barbara Mysko, Vice-Chairperson: On March 29, 2023, Bryan Fraser filed an unfair labour practice application with the Board, naming as Respondent, Saskatchewan Public Safety Agency [Employer]. The Union, having been involved in the related matters, received a copy of the application but did not participate in these proceedings. In the application, Fraser alleges that the Employer contravened clause 6-123(1)(e) of *The Saskatchewan Employment Act* [Act] for failure to make timely payment in compliance with a Board order, dated December 22, 2022. He seeks relief, pursuant to clauses 6-104(b) and (e) of the Act, in the form of a declaration and an order requiring the Employer to pay him $36 for the monetary loss he suffered as a result of pursuing the recovery of the Board's order.

[2] This matter originates with a decision issued by the Board in LRB File Nos. 083-22, 128-22, 151-22 and 168-22: *Fraser v Saskatchewan Public Safety Agency*, 2022 CanLII 121639 (SK LRB). In those matters, the Board found that the Employer had committed unfair labour practices contrary to section 6-62 of the Act and, further to Fraser's request for costs, ordered that the Employer pay to Fraser $500 toward the expense of participating in the proceedings. In the order, the Board set a deadline for payment of 30 days from the date of the Order.

[3] In the present matter, Fraser alleges that the Employer paid the amount, not within the deadline set out by the Board, but within 96 days. As a result of the late payment, he alleges an unfair labour practice or contravention pursuant to clause 6-123(1)(e) of the Act.

[4] In its Reply, the Employer sets out the following facts which it relies upon in seeking a dismissal of Fraser's application:

> *(a) The board order requiring payment by the Employer was not paid within the time frame set by the board due to a misunderstanding of the impact of a potential judicial review.*
>
> *(b) Mr. Fraser made no inquiries with the Employer with respect to the missing payment. It was only after Mr. Fraser had taken enforcement proceedings that the Employer became aware that payment had not been made in accordance with the board order.*
>
> *(c) As soon as the Employer became aware of the above, payment to Mr. Fraser was made as evidenced by Exhibit 1 in Mr. Fraser's application.*
>
> *(d) The Employer is in the process of reimbursing Mr. Fraser for the $36 he expended in the enforcement procedures he undertook to collect the amount set out in the order. Mr. Fraser did not approach the Employer directly for reimbursement.*

[5] In his application, Fraser asked that this matter be heard without an oral hearing. In its reply, the Employer sought that the matter be summarily dismissed (the Employer did not file a summary dismissal application) or, in the alternative, that the matter be determined by written submissions.

[6] At Appearance Day, Fraser indicated that he was also seeking prejudgment interest on the $36. As that claim was not included in the pleadings, the Board suggested to Fraser that he would have to apply to amend his pleadings if he wished to pursue that remedy.

[7] On the Appearance Day call, counsel for the Employer apologized to Fraser on behalf of the Employer, indicating that no disrespect was intended by making the payment late.

[8] The Board set a date for a pre-hearing conference. When the matter was not resolved at the pre-hearing, the Board set deadlines for written submissions from the parties. The Board has received submissions from both Fraser and the Employer, which the Board has reviewed and found helpful. The purpose of these Reasons is to determine whether to grant the remedies sought by Fraser.

Arguments:

[9] In his written submissions, Fraser admits that the Employer voluntarily paid the required monetary relief and acknowledges that an order pursuant to clause 6-104(2)(e) is unnecessary. That provision permits the Board to fix and determine the monetary loss suffered by an employee as a result of a contravention of an order of the Board. Fraser persists, however, in his request for an order pursuant to clause 6-104(2)(b), which provides the Board with the power to determine whether an unfair labour practice or contravention of an order of the Board has been engaged in.

[10] Fraser provides the following reasons for his request:

> a. *The Employer has admitted the late payment – this is sufficient to establish the contravention.*
>
> b. *A contravention pursuant to clause 6-104(2)(b) does not require intent.*
>
> c. *Finding a contravention would attain the purposes of the Act.*
>
> d. *Issuing an order would be consistent with the Legislature's intent to make Board orders enforceable, in Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Temple Gardens Mineral Spa Inc., 2006 CanLII 62957 (SK LRB) [Temple Gardens].*
>
> e. *The mistake made by and acknowledged by the Employer, for its size and sophistication, "exhibits a degree of negligence which, given its size and capacity, weighs in favour of the Board making the order I request in order to emphasize the duty of diligence in complying with Board orders".*
>
> f. *The order would enable the Attorney General's jurisdictional authority, pursuant to section 6-124, as the Legislature had intended.*
>
> g. *The posting of the order would serve an educational purpose as in, for example, CB, HK & RD v Canadian Union of Public Employees, Local No. 21, 2017 CanLII 68786 (SK LRB) [CB v CUPE].*

[11] The Employer submits that the Board has no role pursuant to section 6-123, and that should be the end of the matter. The Employer relies on the Board's finding in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, Local 568 v Signal Industries (1998) Saskatchewan Ltd*., 2020 CanLII 10511 (SK LRB), as follows:

> *[22] None of the other remedies requested by the Union will be granted. The Board has no role under section 6-123 of the Act. While the Board has a wide range of remedies available to it under the Act, they must be applied in a manner that is consistent with the policy objectives of section 6-56 and consistent with the over-riding goal of putting the employees in the position they would have been in but for the breach.*

[12] The Employer acknowledges, however, that Fraser asks for a finding of a contravention so that a prosecution may be launched pursuant to section 6-124. The Employer argues that there

are sound policy reasons for the Board finding that it has no role pursuant to section 6-123. If the Board were to make a determination to the contrary, it would open the door to every union, employee and employer bringing a similar application if found to have contravened subsections 6-41(2) and 6-123(1).

[13] Even if that were not the end of the matter, the Employer asks the Board to use its discretion to not make the declaration requested. The Employer urges the Board to consider the practicalities of the matter, including the fact that Fraser has already been made whole. It also states that declining to make the declaration requested would be consistent with the Board's emphasis on promoting the relationships between the parties to a dispute and refraining from intervening too readily in matters that could be or have been otherwise resolved on the initiative of the parties.

Applicable Statutory Provisions:

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

> ***6-104****(1) In this section:*
>
> > *(a) "former union" means a union that has been replaced with another union or with respect to which a certification order respecting the union has been cancelled;*
> >
> > *(b) "replacing union" means a union that replaces a former union.*
>
> *(2) In addition to any other powers given to the board pursuant to this Part, the board may make orders:*
> *. . .*
> > *(b) determining whether an unfair labour practice or a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board is being or has been engaged in;*
> > *…*
> > *(e) fixing and determining the monetary loss suffered by an employee, an employer or a union as a result of a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board by one or more persons, and requiring those persons to pay to that employee, employer or union the amount of the monetary loss or any portion of the monetary loss that the board considers to be appropriate;*
>
> ***6-123****(1) No employer, employee or other person shall:*
> > *(a) intentionally delay or obstruct a labour relations officer or investigating officer in the exercise of any power or duty given to the officer pursuant to this Part;*
> >
> > *(b) fail to reasonably cooperate with a labour relations officer or investigating officer in the exercise of any of his or her powers or the performance of any of his or her duties;*

> *(c) fail to produce to the board any books, records, papers, documents, payrolls, contracts of employment or other record of employment that the employer, employee or other person is required to produce;*
>
> *(d) make a complaint to the board knowing it to be untrue;*
>
> *(e) fail to comply with a board order; or*
>
> *(f) fail to comply with any other provision of this Part or the regulations made pursuant to this Part.*
>
> *(2) Every person who contravenes a provision of subsection (1) is guilty of an offence and is liable on summary conviction:*
>
> *(a) if the contravention is with respect to a lockout, to a fine not exceeding $1,000 for each day that the lockout continues;*
>
> *(b) if the contravention is with respectto a strike,to a fine not exceeding $1,000 for each day that the strike continues;*
>
> *(c) with respect to any contravention other than one mentioned in clause (a) or (b):*
>
> *(i) in the case of an individual, to a fine not exceeding $5,000; or*
>
> *(ii) in the case of a corporation, union or other person, to a fine not exceeding $100,000.*
>
> ***6-124** No prosecution for an offence pursuant to this Part shall be commenced without the consent in writing of the Attorney General.*

Analysis:

[15] As argued by the Employer, the Board has previously found that it has no role in relation to section 6-123. This provision sets out the circumstances under which a person may be guilty of an offence and liable on summary conviction. These are matters for purposes of a prosecution. The Board does not make a determination pursuant to section 6-123 for purposes of a prosecution. Rather, a prosecution occurs, in theory, for the purposes of determining whether a person is guilty and of determining whether to convict.

[16] However, the Board may make orders determining whether a contravention of an order or decision of the board is being or has been engaged in, and to require any person to refrain from contravening an order of the Board and requiring a person to do any thing for the purpose of rectifying a contravention of an order, pursuant to clauses 6-104(2)(b) and (c). The Board's power pursuant to section 6-104 is discretionary.

[17] To be sure, section 6-108 raises a question about whether the Board retains jurisdiction to make the order requested when it has caused a certified copy of a Board Order to be filed with

the Court of King's Bench. Neither party has raised this issue. However, given the Board's other conclusions, it is not necessary to decide this issue.

[18] The question before the Board is whether the circumstances justify the remedy requested. As acknowledged by Fraser, the request for monetary relief is moot. Reasonably, Fraser has withdrawn this request. Moreover, the request for prejudgment interest does not appear anywhere in the pleadings. Therefore, the only remedy being sought is a declaration.

[19] The purposes underlying the remedies granted by the Board are well-established. A helpful description is found in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Loraas Disposal Services Ltd.*, [1998] Sask LRBR 556 at 568:

> *The overriding goal of the Board in designing an appropriate remedy is to place the Union and its members in the position they would have been in but for the Employer's breach of the Act. In so doing, the Board avoids punitive remedies and seeks to design remedies that support and foster the underlying purposes of the Act, which includes the encouragement of unionized workplaces and the encouragement of healthy collective bargaining.*

[20] A similar but more detailed explanation is found in *Canadian Labour Law*:[1]

> *For giving effect to these general considerations, a number of subsidiary principles have emerged from the decided cases. For example, a remedy should not be devised that is primarily punitive in purpose. The wording of the general remedial powers suggests this and so does the existence of penalties specifically set out elsewhere in Canadian statutes. A primarily punitive approach would, in any event, undermine the settlement or accommodative efforts of labour boards and could adversely affect their relationships with law-abiding employers. It has also been held that remedies should not be designed with the purpose of humiliating or embarrassing the offender. Remedies must be aimed at correcting and rectifying situations covered by unfair labour practices, although they may incidentally cause the law-breaker embarrassment. The British Columbia board has stressed that remedies should be proportionate and appropriate to the circumstances in the case. They should also be consistent with a board's neutral adjudicating role.*

[21] The Board has on many occasions considered whether there is a valid labour relations purpose in granting a remedy: *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9841 v Saskatchewan Government and General Employees' Union*, 2022 CanLII 116333 (SK LRB); *Workers United Canada Council v Amenity Health Care operating as Tim Hortons*, 2021 CanLII 106898 (SK LRB); *Saskatoon Co-operative Association Limited v United Food and Commercial Workers*, 2020

[1] George W. Adams, *Canadian Labour Law*, loose-leaf (3/2023 - Rel 1) 2nd ed (Toronto: Thomson Reuters, 2023), at 10-251.

CanLII 71339 (SK LRB); *Moose Jaw Firefighters' Association Local 553 v Moose Jaw (City)*, 2016 CanLII 36502 (SK LRB) [*Moose Jaw*]. In *Moose Jaw*, the Board explained:

> *[140] It is well-established that when structuring a remedy, the Board's over-arching goal "is generally to place the parties into the position they would have been but for the commission of the unfair labour practice." This means the remedy crafted must seek to achieve "a labour relations purpose, that is, generally speaking, to insure collective bargaining and foster[] a good and long term relationship between the parties to the dispute."*

[22] The Board's role is to supervise the collective bargaining relationships between employees, unions, and employers. In determining appropriate remedies, the Board may consider whether a requested remedy will foster a healthy bargaining relationship between the parties, and to that end, whether the remedy will facilitate or undermine the parties' respective capacities to resolve disputes internally.

[23] In the present case, Fraser says that a declaration would align with the legislative intent to ensure that Board orders are enforceable. He relies for this argument on the following quotation lifted from the Board's review, in *Temple Gardens*, of *United Food and Commercial Workers, Local 1400 v F.W. Woolworth Co. (c.o.b. Woolco),* [1992] 4th Quarter Sask Labour Rep 50, (1992) 1992 CanLII 7988 (SK KB), 106 Sask R 1 (Sask. Q.B.), at para 61:

> *… I see the present case is one in which the applicant seeks to have an order of the Labour Relations Board respected. The applicant seeks fulfillment of what the legislature of Saskatchewan intended -- namely that orders of the Board be meaningful and effective and not simply an exercise in futility. Why else have them enforceable as an order of this Court?*
>
> *The orders are intended to be obeyed….*

[24] The Employer points out that, in *Temple Gardens*, the Board declined to make an order of contempt due to considerations of "fairness, practicality and efficiency" and encourages the Board to take similar factors into account in this case.

[25] Fraser also argues that a declaration would serve an educational purpose. In highlighting the Board's education function, Fraser relies on *CB v CUPE*. This comparison is misplaced. In that case the union discriminated against the applicants in respect of what were "extremely serious sexual harassment complaints". The current case involves a late payment of $500 by 66 days, which mistake when discovered was admitted and rectified by the offending party, including through payment of the enforcement costs.

[26] While Board orders are intended to be obeyed, there are other, more relevant and compelling principles that apply in the current case. First, it is necessary for parties to be judicious in their use of public resources to resolve *de minimus* disputes. The Employer has indicated, and Fraser does not contest, that he did not contact the Employer to request payment but instead instigated additional proceedings against it. The practical dispute between the parties has now been solved and is moot. Given that there is no other live, practical purpose to the declaration sought, the only purpose is to penalize, and perhaps, humiliate the Employer. The Board has repeatedly stated that its role in providing remedies is not to penalize the respondent but instead to make the applicant whole. The Board seeks to design remedies that support and foster the underlying purposes of the Act, which include the encouragement of healthy bargaining relationships. If the Board were to issue the declaration it would discourage parties from creating internal capacity to resolve their disputes. In this way, the declaration would serve no labour relations purpose.

[27] To be sure, the Board finds the Employer's explanation for non-payment difficult to reconcile with the practical realities of a "potential judicial review". An individual should not have to pursue an organization (or any person) to effect payment of a remedy owing. That being said, organizations are made of people and sometimes people make mistakes. The question is whether these circumstances justify the remedy sought. The Board thinks that they do not.

[28] The application brought in LRB File No. 052-23 is hereby dismissed. An appropriate order will accompany these Reasons.

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

DATED at Regina, Saskatchewan, this **3rd** day of **August, 2023.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson