Saskatchewan
Labour Relations Board

MOOSE JAW REFINERY PARTNERSHIP, Applicant v UNIFOR LOCAL 595, Respondent

LRB File Nos. 083-23 and 113-23; October 5, 2023
Chairperson, Michael J. Morris, K.C.; Board Members: Vince Engel and Brian Barber

Counsel for the Applicant, Moose Jaw Refinery Partnership: Justin Turc

For the Respondent, Unifor Local 595: Brett Payne, President

Application for summary dismissal – Union applies for order under Division 10 (Technological Change and Organizational Change) – Division 10 inapplicable because collective agreement contains provisions intended to assist employees affected by technological change or organizational change to adjust to the effects of such change.

Application for summary dismissal granted – Division 10 inapplicable – No arguable case – Essential character of dispute is interpretation, application and alleged contravention of collective agreement – Grievance arbitrator has exclusive jurisdiction pursuant to s. 6-45(1).

REASONS FOR DECISION

Background:

[1] Michael J. Morris, K.C., Chairperson: These are the Board's reasons regarding an application by the Moose Jaw Refinery Partnership [Employer] to summarily dismiss an application for an order under section 6-55 of *The Saskatchewan Employment Act* [s. 6-55 application] brought against it by Unifor Local 595 [Union].[1]

[2] Section 6-55 is contained within Division 10 of Part VI of the Act. Division 10 governs parties' obligations to negotiate a workplace adjustment plan in the event of a technological or organizational change.

[3] Importantly, Division 10 does not apply if the parties' collective agreement contains provisions intended to assist employees affected by any technological change or organizational change to adjust to the effects of such a change.[2]

[1] The s. 6-55 application was filed on June 12, 2023; it is LRB File No. 083-23.
[2] *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [Act], s 6-57(1)(a).

[4] Here, article 20 of the parties' collective agreement sets out the notice and process required where the Employer implements a technological change that will result in a reduction in the workforce.[3]

[5] Turning to the chronology, on July 26, 2022, the Employer informed the Union that it anticipated laying off certain employees (pumpmen, and some railcar loaders) due to planned automation. The Employer followed this up with a written notice on July 28, 2022, pursuant to article 20.[4] The Union took issue with the Employer's explanation of how automation would eliminate the need for the impacted positions.

[6] At the time the s. 6-55 application was filed, on June 12, 2023, layoff notices had been issued to four pumpmen and two railcar loaders, with additional layoff notices for railcar loaders expected.[5]

[7] In the meantime, the Union had filed grievances with respect to the layoffs.[6] In the grievances, the Union alleged that the Employer was in breach of the collective agreement due to the layoffs not being attributable to automation. Requested relief included the reinstatement of the positions and the making whole of affected employees. On June 12, 2023, the same day it filed the s. 6-55 application, the Union advised the Employer that it intended to arbitrate the grievances.[7]

[8] The status of the grievances has not been disclosed to the Board.

[9] The s. 6-55 application takes aim at the same conduct as the grievances. Paragraphs 6 and 7 of the application state:

> *6. This situation has raised serious concerns about the company's practices and its commitment to fair labor practices. The union has been in negotiations with the company, but it seems that the company is unwilling to address the issue and provide a satisfactory explanation for the layoffs.*
>
> *7. The Union states that by laying off the pumpman [sic] pursuant to the July 26, 2022 notice and the subsequent discussions between the parties, when there was no technological change justifying the lay-offs, Gibson has breached s. 6-56 and 6-62(1)(d) and 6-7 of the Saskatchewan Employment Act [SEA].*

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[3] The parties' collective agreement is attached as Document #3 to the s. 6-55 application.
[4] The written notice is attached as Document #1 to the s. 6-55 application.
[5] S. 6-55 application, para 3.
[6] Employer's reply to the s. 6-55 application, exhibits "K" and "M".
[7] Employer's reply to the s. 6-55 application , paras 5(w) and 5(x), and exhibits "L" and "N".

[10] The following relief is sought:

> *8. …*
>
> *a. An order declaring that [the Employer] has breached s. 6-56 and 6-62(1)(d) and 6-7 of the SEA and ordering it to comply with the relevant obligations in those sections;*
>
> *b. To be made whole in respect of [the Employer's] breaches, including for the reinstatement of the Pumpmen;*
>
> *c. An order that [the Employer] engage in meaningful bargaining over any workplace adjustment/technological change which is actually necessary; and*
>
> *d. Any other relief as may be appropriate in the circumstances.*[8]

[11] On June 21, 2023, the Employer filed a detailed reply to the s. 6-55 application.

[12] On July 26, 2023, the Employer filed an application to summarily dismiss the s. 6-55 application. Unsurprisingly, it states that technological change is occurring. As will be explained later in these reasons, in large part the Employer's application emphasizes that the dispute centers on the interpretation, application and alleged contravention of the collective agreement, which will be resolved through the grievance process.

[13] The Union filed a one page reply to the Employer's summary dismissal application. In it, the Union specifically admits:

> *(a) That Tech change is occurring;*
>
> *(b) That employees were laid off as per CBA;*
>
> *(c) On July 26, a notice was issued to the Union for article 20 in our CBA.*[9]

[14] The Union's reply states that the material facts it relies upon are contained in the parties' pleadings (i.e., *both* parties' pleadings) with respect to the s. 6-55 application.[10]

[15] The Union also states:

> *There are provisions for affected employees and all employees were handled as per article 20, however, the employees that are affected by article 20, the work still exists and is currently being filled by other employees who can no longer complete their own regular job duties, thereby wrongfully terminating two positions.*
> *…*

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[8] S. 6-55 application, para 8.
[9] Union's reply to summary dismissal application, paras 2(a), (b) and (c).
[10] Union's reply to summary dismissal application, paras 5(a) and (b).

> *… The Union is in belief that [the Employer] has terminated employees wrongfully without implementing "Tech Change or Automation" that they have claimed. …*[11]

[16] Though its pleading is somewhat contradictory, the Board understands the crux of the Union's reply to be that: (1) Employees were laid off without technological change justifying their terminations; and (2) The Employer's conduct constituted an unfair labour practice under the Act.

[17] The parties had the opportunity to provide written submissions with respect to the Employer's summary dismissal application, but both elected to rely solely on their pleadings.

Position of the Employer:

[18] The Employer's position is that Division 10 of the Act is inapplicable, pursuant to clause 6-57(1)(a), because the parties' collective agreement contains provisions that are intended to assist employees affected by a technological change to adjust to the effects of the change.

[19] The Employer notes that article 20 of the collective agreement includes the following:

> *ARTICLE 20 - JOB SECURITY*
> *PERMANENT WORK FORCE REDUCTION*
>
> *20.01 In the event of a permanent closure, partial plant closure, technological change or change of methods of all or part of the Refinery resulting from the introduction of new methods or facilities the Company agrees to provide the Union with six (6) months' notice, where practical, or statutory notice, where applicable, whichever is the greater.*
>
> *20.02 After providing such notice, the Company will meet with the Union:*
>
> *(a) To discuss the impact of the closure or partial closure on the affected employees;*
>
> *(b) To consider all available methods to facilitate the planned work force reductions through attrition;*
>
> *(c) To participate with the Union in every way possible to provide such workforce reduction within the notice period specified above or in circumstances where attrition is not an appropriate method of providing the required reduction, the parties will discuss other methods of reducing the workforce and minimizing the negative impact on employees affected.*
>
> *(d) To train or retrain employees subject to layoff for job vacancies which exist at that time within the Refinery, provided the employees have the basic qualifications and aptitude required for the job vacancy. In the event that employees are downgraded solely due to a plant closure, partial plant closure, technological change or change of methods or facilities, rate protection will be provided as per Appendix V.*

[11] Union's reply to summary dismissal application, paras 4(a) and (d).

(e) Employees facing layoff as a result of plant closure, partial plant closure, technological change or change of methods or facilities, having the basic qualifications may be considered for transfer to another Unifor-Gibson Energy's/Moose Jaw Refinery represented site. Transferred employees will be entitled to rate protection provided the protected rate in their classification is no greater than the corresponding classification of the new location.

(f) In the case of an employee who does not qualify for a job vacancy as stated above or in the event that no job vacancy exists, the Company will participate in every reasonable way possible with the Union and the government in training and retraining any employee for outside employment opportunity. Provision of this training for outside employment will occur only when an employee's recall rights have expired or they have waived their recall rights and accepted severance payment.

(g) In addition, the company will reimburse an employee for training and/or moving costs incurred within two years of termination to a maximum of two thousand dollars ($2,000), provided such expense is for the purpose of an outside employment opportunity, less any other training or moving subsidy available to the employees. Training costs will include registration, tuition fees, books and examination fees.

20.03 An employee covered by this collective agreement who is permanently laid off as a result of a closure or partial closure pursuant to Article 20.01 shall be entitled to receive a severance payment from the Company as outlined in Article 20.05 provided that:

(a) The employee remains available for work until date of layoff;

(b) The employee is not terminated for just cause prior to the lay-off; and

(c) The lay-off exceeds four (4) months accumulative in a calendar year.

An employee who fails to report for work within fourteen (14) days after recall within the four (4) month accumulative period in a calendar year forfeits any rights under this Article.

20.04 Upon acceptance and receipt of such severance payment, the employee's employment with the Company is terminated and the employee will have no further seniority rights, notwithstanding Article 8, seniority of the collective agreement.

20.05 In preference to layoff, employees who have at least one (1) year of service may request to accept severance pay and terminate their employment. Employees who remain on layoff for a period of twelve (12) months will receive severance pay and their employment will be terminated.

Where an employee is eligible for severance pay, the employee will receive severance pay based on:

- *Two (2) weeks' pay, plus two (2) weeks' pay for each year of continuous service multiplied by 1.30, provided the employee has at least one (1) year of continuous service. Severance pay for a partial year of service will be calculated on a pro-rated basis.*

The Company will take into consideration all applicable legislation and regulations in an effort to provide the employee with the greatest flexibility in the payment of severance pay.

20.06 For the purpose of this Article, one (1) week's pay is defined as forty (40) hours at the employee's base hourly rate at the time of lay-off.

20.07 An employee terminated pursuant to this Article remains eligible to be considered for re-employment as a new employee.

20.08 Performance of work for the Company by contractors at the Refinery will not serve to alter any right an employee has under the terms of this Agreement nor cause the lay-off of any employee in the Bargaining Unit. The Company agrees to give written notice for such contracting out to a designated representative of the Union, prior to the work being performed. If time does not permit, the Company shall notify a Union official and follow with a written notice. In the notification, the Company will give the name of the contractor, the approximate number of the personnel involved, and the approximate duration; such notices will be dated. If it becomes necessary to contract work out the Company will endeavor to use unionized contractors. The parties agree the Union may request on a quarterly basis the number of contractors utilized and the total number of hours worked by such contractors.

Using existing forums (e.g. Union/Management Meetings), the parties will proactively discuss potential workforce changes or initiatives that may impact the workforce. The parties will explore options that could minimize any impact on current employees.

20.09 The Company shall provide employees with first notice of any new positions created by the Company as a result of an expansion to provide steam and/or power to the Refinery. Such positions shall be filled in accordance with Article 10.[12]

[20] Because Division 10 of the Act is inapplicable, it is plain and obvious that the Union cannot obtain any relief pursuant to s. 6-55. Even if Division 10 applied, which is denied, the Union's s. 6-55 application was untimely, since it was filed more than 30 days after the Union took issue with the Employer's July 28, 2022 written notice of workforce reduction due to planned automation.[13] The Employer also submits that the Union did not serve a notice to bargain a workplace adjustment plan within 30 days of the Employer's written notice pursuant to s. 6-56(2), and accordingly, even if Division 10 applied (which is denied), the Union did not trigger an obligation on the Employer to bargain pursuant to s. 6-56.

[21] The Employer submits that the essential character of the dispute between it and the Union is whether the Employer breached the collective agreement, including article 20. This dispute falls within the exclusive jurisdiction of a grievance arbitrator, pursuant to s. 6-45(1) of the Act.

[12] S. 6-55 application, Document #3.
[13] See s 6-55(2) of the Act regarding the 30 day period within which an application pursuant to s. 6-55 must be filed.

Position of the Union:

[22] As aforementioned, the Union's reply to the Employer's summary dismissal application is limited. Effectively, the Union takes the position that no automation has occurred justifying a workforce reduction. The Employer has laid off employees in contravention of the collective agreement, and wrongfully relied on article 20 of the collective agreement in doing so.

Applicable Statutory Provisions:

[23] The following provisions of the Act are relevant:

> ***Good faith bargaining***
>
> ***6-7*** *Every union and employer shall, in good faith, engage in collective bargaining in the time and in the manner required pursuant to this Part or by an order of the board.*
> *…*
>
> ***Arbitration to settle disputes***
>
> ***6-45****(1) Subject to subsections (2) and (3), all disputes between the parties to a collective agreement or persons bound by the collective agreement or on whose behalf the collective agreement was entered into respecting its meaning, application or alleged contravention, including a question as to whether a matter is arbitrable, are to be settled by arbitration after exhausting any grievance procedure established by the collective agreement.*
> *…*
>
> ***Technological change and organizational change***
>
> ***6-54****(1) In this Division: …*
>
> *(b) "technological change" means:*
>
> *(i) the introduction by an employer into the employer's work, undertaking or business of equipment or material of a different nature or kind than previously utilized by the employer in the operation of the work, undertaking or business; or*
>
> *(ii) a change in the manner in which the employer carries on the work, undertaking or business that is directly related to the introduction of the equipment or material mentioned in subclause (i).*
>
> *(2) An employer whose employees are represented by a union and who proposes to effect a technological change or organizational change that is likely to affect the terms, conditions or tenure of employment of a significant number of the employees shall give notice of the technological change or organizational change to the union and to the minister at least 90 days before the date on which the technological change or organizational change is to take effect.*
>
> *(3) The notice mentioned in subsection (2) must be in writing and must state:*
>
> *(a) the nature of the technological change or organizational change;*

(b) the date on which the employer proposes to effect the technological change or organizational change;

(c) the number and type of employees likely to be affected by the technological change or organizational change;

(d) the effect that the technological change or organizational change is likely to have on the terms, conditions or tenure of employment of the employees affected; and

(e) any other prescribed information.

…

Application to board for an order re technological change or organizational change

6-55*(1) A union may apply to the board for an order pursuant to this section if the union believes that an employer has failed to comply with section 6-54.*

(2) An application pursuant to this section must be made not later than 30 days after the union knew or, in the opinion of the board, ought to have known of the failure of the employer to comply with section 6-54.

(3) On an application pursuant to this section and after giving the parties an opportunity to be heard, the board may, by order, do all or any of the following:

(a) direct the employer not to proceed with the technological change or organizational change for any period not exceeding 90 days that the board considers appropriate;

(b) require the reinstatement of any employee displaced by the employer as a result of the technological change or organizational change;

(c) if an employee is reinstated pursuant to clause (b), require the employer to reimburse the employee for any loss of pay suffered by the employee as a result of the employee's displacement.

(4) A board order made pursuant to clause (3)(a) is deemed to be a notice of technological change or organizational change given pursuant to section 6-54.

…

Workplace adjustment plans

6-56(1) *If a union receives notice of a technological change or organizational change given, or deemed to have been given, by an employer pursuant to section 6-54 or 6-55, the union may serve notice on the employer in writing to commence collective bargaining for the purpose of developing a workplace adjustment plan.*

(2) The written notice mentioned in subsection (1) must be served within 30 days after the date on which the union received or was deemed to have received the notice.

(3) On receipt of a notice pursuant to subsection (1), the employer and the union shall meet for the purpose of collective bargaining with respect to a workplace adjustment plan.

…

When Division does not apply

6-57*(1) This Division does not apply if:*

> *(a) a collective agreement contains provisions that are intended to assist employees affected by any technological change or organizational change to adjust to the effects of the technological change or organizational change; …*
>
> *…*
>
> ***Unfair labour practices – employers***
>
> ***6-62****(1) It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*
>
> *…*
>
> *(d) to fail or refuse to engage in collective bargaining with representatives of a union representing the employees in a bargaining unit whether or not those representatives are the employees of the employer;*
>
> *…*
>
> ***Powers re hearings and proceedings***
>
> ***6-111****(1) With respect to any matter before it, the board has the power:*
>
> *…*
>
> *(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;*
>
> *(q) to decide any matter before it without holding an oral hearing;*
>
> *…*

Analysis and Decision:

i) General principles

[24] The Employer applies to dismiss the Union's application pursuant to clause 6-111(1)(p) on the basis that it discloses no arguable case. The test for summary dismissal on this basis is summarized 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.*[14]

[14] *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB) [*Roy*], at para 8.

[25] As indicated in *Roy*, summary dismissal is a vehicle for the disposition of applications that are patently defective.[15] The defect(s) must be apparent without the need for weighing evidence, assessing credibility, or evaluating novel statutory interpretations.[16] It must be plain and obvious the application will fail even if the applicant proves everything they allege.

[26] The Employer also applies to dismiss the Union's application pursuant to clause 6-111(1)(o) on the basis that the essential character of the dispute concerns the interpretation, application or alleged contravention of the collective agreement within the meaning of subsection 6-45(1), and accordingly, that the Board is without jurisdiction to adjudicate it. In determining the essential character of the dispute, the Board must focus on the facts underlying the dispute and whether they concern the interpretation, application or alleged contravention of the collective agreement, and not the legal packaging in which an applicant presents their dispute to the Board.[17]

ii) Application

[27] Fundamentally, the Union relies on Division 10 of the Act as grounding the s. 6-55 application. The Employer takes the position that Division 10 is inapplicable. The Employer is correct.

[28] As expressly stated in s. 6-57(1)(a), Division 10 does not apply where the parties' collective agreement contains provisions that are intended to assist employees affected by any technological change or organizational change to adjust to the effects of the technological change or organizational change.

[29] Article 20 of the parties' collective agreement contains such provisions. In summary, it requires:

- That the parties meet to consider all available methods to facilitate the planned work force reductions through attrition;
- Where attrition will not suffice, that the parties discuss other methods of reducing the workforce to minimize the negative impact on affected employees;

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[15] *Roy*, at para 9.
[16] *Roy*, at para 9.
[17] *Lapchuk v Saskatchewan (Highways),* 2017 SKCA 68, at paras 15-17.

- The training or retraining of employees subject to layoff for existing job vacancies;
- That affected employees be considered for transfer to another site;
- Training or retraining of affected employees for external employment (once recall rights have expired or been waived through the acceptance of severance);
- Reimbursement of training and moving expenses (up to $2,000) within two years of termination;
- A severance payment in the case of a permanent layoff.

[30] Because the parties' collective agreement contains the type of provisions contemplated by s. 6-57(1)(a), Division 10 is inapplicable.

[31] Division 10 is a statutory mechanism whose purpose is to require parties to bargain in good faith toward achieving a workplace adjustment plan. Section 6-54 requires an employer to give notice of a proposed technological or organizational change, and s. 6-56 enables a union to require an employer to commence negotiating a plan to address the change. Under s. 6-55, a union can apply to the Board if it believes an employer has failed to comply with s. 6-54. The Board's powers under s. 6-55 include ordering the reinstatement and compensation of displaced employees where notice pursuant to s. 6-54 has not been complied with, and directing the employer to not proceed with any technological or organizational change for any period not exceeding 90 days. A board order directing the employer to not proceed with technological change is deemed notice for the purpose of s. 6-54, and enables a union to require an employer to commence negotiating a workplace adjustment plan, per s. 6-56.

[32] If the parties have the functional equivalent of a workplace adjustment plan in their collective agreement – i.e., provisions that are intended to assist employees affected by any technological change or organizational change to adjust to the effects of the technological change or organizational change – then Division 10 has no application. The parties' obligations are governed and enforced through their collective agreement, not Division 10.

[33] This means that no relief is available to the Union under s. 6-55 or based upon an alleged failure to comply with Division 10, and it is plain and obvious that its application must fail in these respects.

[34] It also means that the essential character of the parties' dispute concerns the interpretation, application and alleged contravention of their collective agreement. Indeed, the Union filed grievances in this regard.

[35] In *Mobile Crisis Services*,[18] the Board was faced with a similar predicament, though the union hadn't filed grievances in addition to an application to the Board.[19] The Board's reasons included the following:

> ***[25]*** *The determinative factor is the essential character of the dispute, and not the legal packaging in which it is presented. If the Board determines that the essential character of the dispute is the meaning, application, and alleged contravention of the collective agreement, then it is of no consequence that the Union has represented the dispute as something other than the meaning, application, and alleged contravention of the collective agreement. Simply defining a dispute as an unfair labour practice does not make it so.*
>
> …
>
> ***[30]*** *The pleadings disclose what is a straightforward dispute. The Union states that the Employer breached the Agreement, by reimbursing the grievor for the equivalent of four, instead of eight, working days. The Employer says that it did not breach the Agreement, because it is required to reimburse the grievor for only four days under the Agreement, and no more. Taken together, the pleadings raise a dispute pertaining to an alleged breach based on differing interpretations. This is not a case, as in Québec, where "[e]veryone agrees on how the agreement, if valid, should be interpreted and applied".[3] The basis for assessing the breach turns, by necessity, on the meaning of the Agreement.*
>
> …
>
> ***[43]*** *Based on the foregoing, the Board concludes that this matter is sufficiently clear to decide to summarily dismiss for want of jurisdiction. Ultimately, the essential character of the matter does not fall within the jurisdiction of this Board.*[20]

[36] Here, the Board is similarly satisfied that the essential character of the Union's dispute is beyond its jurisdiction. It centers on whether the Employer acted in accordance with the collective agreement. Pursuant to s. 6-45(1), this is within the exclusive jurisdiction of a grievance arbitrator.

[37] The result of these reasons is that the s. 6-55 application is dismissed pursuant to clauses 6-111(1)(o), (p) and (q) of the Act. An appropriate order will accompany these reasons.

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[18] *Saskatchewan Government and General Employees' Union v Mobile Crisis Services Inc.*, 2019 CanLII 76953 (SK LRB) [*Mobile Crisis Services*].
[19] In *Mobile Crisis Services* the Union only filed an unfair labour practice application with the Board.
[20] *Mobile Crisis Services*, at paras 25, 30, 43.

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

DATED at Regina, Saskatchewan, this **5th** day of **October, 2023.**

LABOUR RELATIONS BOARD

Michael J. Morris, K.C.
Chairperson