Saskatchewan
Labour Relations Board

LYLE BRADY, Applicant v UNITED STEELWORKERS, LOCAL 5917, Respondent and EVRAZ RECYCLING, Respondent

LRB File No. 030-23; June 17, 2024
Vice-Chairperson, Barbara Mysko (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*

For Lyle Brady:	Self-represented
Counsel for United Steelworkers, Local 5917:	Samuel I. Schonhoffer
Counsel for Evraz Recycling:	Mathias Link

Original Employee-Union Dispute – Preliminary Hearing on Delay – Production Order – Non-Compliance with Order – Request to Dismiss Duty of Fair Representation Application.

Abuse of Process Doctrine – No Possibility of a Fair Hearing – Delay Explanation Unavailable – Original Application Dismissed for Undue Delay.

REASONS FOR DECISION

Introduction:

[1] Barbara Mysko, Vice-Chairperson: Lyle Brady is a former employee of Evraz Recycling [Employer], having tendered his resignation in or around August 23 or 25, 2021. He filed a duty of fair representation [DFR] application[1] with the Board on February 14, 2023, approximately 18 months later. The Union has sought that the matter be dismissed for delay. In a decision dated July 31, 2023 [Decision No. 1], the Board allowed the matter to proceed to a preliminary hearing to decide whether to dismiss it because of undue delay.[2]

[2] Shortly after that decision was issued, the Union raised a concern that Brady had not responded to its request for the production of documents. Since then, the Union has filed a production application, the Board has held three related hearings, and the Board has issued two Orders requiring Brady to produce certain documents.

[1] LRB File No. 030-23.
[2] *United Steelworkers, Local 5917 v Lyle Brady*, 2023 CanLII 68839 (SK LRB).

[3] Given what the Union describes as Brady's "oppositional and defiant"[3] approach to the production of these documents, the Union is now asking that the Board dismiss the DFR application in its entirety.

[4] For the following reasons, the Board has decided to dismiss the DFR application, as requested. To understand this result, it is necessary to review the procedural background leading up to the present state.

Procedural Background:

[5] After Decision No. 1 was issued, the Board set up a case management conference for the purpose of organizing the preliminary hearing.

[6] Brady, the Union, and the Employer attended the case management conference, which was held virtually. At the conference, the Union indicated that it had made a production request of Brady and had not received a response. Brady claimed that he had also asked for documents (not by letter but at an earlier meeting and in his reply to the summary dismissal application) and didn't receive a response.[4]

[7] The Board repeatedly indicated that the documents requested should be in relation to the delay issue, not the merits.

[8] The Board set a tentative date for the hearing of any production application, being December 1, 2023. The Board also set tentative dates for the delay application, being March 7 and 8, 2024.

[9] During the conference, Brady offered that his health was a reason for the delay, asserted that "to understand it better we would have to go into the merits and the timeline", and then held a document up to the screen, described it as a 152-page medical file, and advised that it disclosed "why it took so long".

[10] Following the case management conference, both the Union and Brady made production applications. The hearing with respect to these applications proceeded on December 1. At the

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[3] Oral Submissions, May 23, 2024.

[4] The Board explained that the expectation was that parties make a request in writing, and that if those requests were not satisfied then make a production application to the Board. The Board provided Brady with the information necessary to make the production application, including the specific Form and the relevant provision in the Regulations.

hearing, Brady argued that the DFR should be determined before any consideration be given to delay. In particular, he asserted:

> *I don't disagree with giving any documents. But I think there's an order. Simply because they said I was not injured. So prove it.*

[11] He also acknowledged that he was asking for documents related to the merits of the DFR.

[12] Following that hearing, on December 12, 2023, the Board ordered that Brady produce the following documents by the end of the day on February 9, 2024 [Production Order]:

> *a. Any correspondence, applications, or submissions made to the Occupational Health and Safety Division (OHS) in September 2021 and any notes from attendances on OHS in connection with the foregoing;*
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> *b. Any correspondence in relation to the respondent's discussions with the Saskatchewan Labour Relations Board (SLRB) in relation to the initial application, following which the respondent alleges he was redirected to the Saskatchewan Human Rights Commission (SHRC) and any notes in the respondent's possession from attendances on the SLRB in connection with the above;*
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> *c. Any correspondence, applications, or submissions made to the SHRC in pursuit of a claim in relation to the events and circumstances alleged in this application, including specifically:*
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> *i. Any and all correspondence with the SHRC when the respondent took his complaint there after he was initially redirected there by the SLRB;*
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> *ii. Any and all correspondence beginning in December 2021 with the [SHRC];*
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> *iii. The intake questionnaire filed with the SHRC;*
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> *iv. The completed submissions from April 29, 2022;*
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> *v. The November 16, 2022 letter from the Deputy Director of Resolution rejecting the respondent's complaint;*
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> *vi. The November 18, 2022 respondent's response to the Deputy Director of Resolution;*
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> *vii. The correspondence to and from the respondent related to the requests the [SHRC] was making for more information;*
>
> *viii. The correspondence with the SHRC where it closed the complaint, and then told the respondent to go back to OHS and to Employment Standards;*
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> *ix. The further submissions made to the [SHRC] on February 2, 2023;*
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> *x. The March 29, 2023 email explaining why the case would not be heard.*

d. Any notes from attendances on the SRHC in connection with the above;

e. Documents relating to the complaint to the Saskatchewan Workers' Compensation Board (WCB), including any originating documents, submissions, reasons for rejection, or correspondence in relation to this complaint now before the [SLRB];

f. The correspondence and documents in relation to the second attempt to file with OHS, as alluded to in the reply, including his referral to Employment Standards;

g. Any correspondence with Employment Standards where it redirects the respondent to the SLRB prior to filing the complaints at issue;

h. Any correspondence with Service Canada/Employment Insurance regarding the adjudication of the respondent's claim for benefits, including any submissions made with respect to the respondent's claim for benefits, and any correspondence providing Employment Standard's position on the respondent's benefits, including the approval in December 2021, as described in the respondent's submissions of June 13, 2023;

i. Entries in the "notebook" that is referred to in the respondent's response of June 13, 2023, in the period of September 2021 and February 14, 2023, which record any attendances on or correspondence with:

i. OHS;
ii. SLRB;
iii. SHRC;
iv. WCB;
v. Employment Standards;
vi. Service Canada/Employment Insurance;
vii. The United Steelworkers or any of its employees or officials.

j. Should he decide to rely on them for the preliminary hearing, the following documents referred to by the respondent in the case management conference on September 27, 2023:

i. The 152-page document package of medical documents which the respondent described as explaining the reason for delay in filing his application in LRB File No. 030-23.

[13] In its reasons for decision, the Board explained the importance of the Production Order deadline: [5]

> *[65] The hearing on the preliminary matter is scheduled to be heard on March 7 and 8, 2024. It is necessary to set a deadline for the receipt of the documents to ensure that this proceeding stays on track and to provide the parties with sufficient time to prepare for that hearing. All documents, except the Union's two medical documents from August 2021, are to be provided by the end of the day, February 9, 2024. Those latter documents, if required to be produced, are to be provided by February 13, 2024.*

[14] Brady was ordered to produce those documents to the Union and to the Employer.

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[5] *United Steelworkers, Local 5917 v Lyle Brady*, 2023 CanLII 116917 (SK LRB).

[15] The majority of the documents that Brady was ordered to produce had to do with his interactions with various organizations, such as the Workers' Compensation Board [WCB], the Saskatchewan Human Rights Commission [SHRC], and Occupational Health & Safety Division [OHS], as well as this Board. In the Board's words, these interactions would reveal "his circuitous route to filing an application with this Board".[6]

[16] Given the purpose for which they were being proffered, it was important that the documents be produced in complete form (to the extent they were in his possession and control):

> *[40] Furthermore, at any point during these interactions, Brady may have been redirected to this Board, or may have abandoned an aspect of the complaint that would undermine his reliance on the alternative forum as a reason for the delay. In particular, the Board notes that the SHRC complaint was rejected in November 2022. It would be arbitrary and unfair to order only a portion of the correspondence be produced; the correspondence exists on a continuum, which if interrupted may present an incomplete picture and result in gaps that would lead to further requests for production.*
>
> *[emphasis added]*

[17] The Board's Order with respect to the 152-page medical document, however, was conditional:

> *[44] The second request relates to the 152-page package referred to during the CMC. Brady has indicated that he plans to rely on this package in relation to the delay. If Brady intends to rely upon this package, it should be produced to allow the Union to prepare. By indicating his reliance, Brady is asserting that the report is relevant and has probative value. There is no issue of particularization. Nor is there any concern that the Union's request is in the nature of a fishing expedition. This document arises directly from Brady's explanation for the delay. On the other hand, if Brady does not intend to rely on this document, he will not be required to produce it.*
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> *[45] To be clear, the Board's order will apply whether or not Brady's description of "152-pages" was accurate. Furthermore, the Board has not reviewed the package. It is unclear precisely what timeframe it covers. When the hearing occurs, the Board will have to make a determination as to whether Brady's reliance on the package as containing relevant evidence is appropriate.*

[18] With respect to Brady's application, the Board found that none of the documents he requested were relevant to the delay issue:

> *[50] Again, the underlying matter is the preliminary hearing. The issue is whether the underlying application should be dismissed for undue delay - not whether the Union failed in its duty as the employee's representative. Given this, the question as to whether any documents are arguably relevant is considered in reference to the issue of delay, and not in relation to the merits of the employee-union dispute.*

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[6] *United Steelworkers of America, Local 5917 v Lyle Brady*, 2023 CanLII 116917 (SK LRB), at para 38.

> *[51] To be sure, Brady suggests that the merits of the employee-union dispute and the delay are interrelated. However, he has provided no reason as to why this is the case, other than to suggest that his poor health was caused by workplace safety issues, and in turn, his poor health impeded his progress in pursuing the employee-union dispute. However, the cause of his poor health is not in issue on the delay hearing. What is in issue are his reasons for any delay. If his health impeded his progress (leaving aside whether it can justify delay), that fact is what is relevant. In other words, the fact of his poor health during the delay period is relevant, not the cause of his poor health at any other time.*
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> *[52] Bearing in mind the foregoing, the Board has come to the conclusion that none of the documents requested by Brady are relevant.*

[19] The Board, however, did make a production Order that was based on the Union's agreement to provide certain documents. The Order covered the collective agreement and two medical documents that the Union had in its possession. With respect to the medical documents, the Board had this to say:

> *[61] Finally, the Union has agreed to produce two medical documents (from August 2021) which it has in its possession on the basis that medical evidence has been put in issue. The Union suggests that it agrees to do so based on reciprocal production. While such a condition is unusual, there is a chance that Brady will decide not to rely on his medical evidence. Given this, the Board will order that the Union produce these medical documents if Brady produces his 152-page medical document.*

[20] The deadline for the production of documents was February 9, 2024, except for those two medical documents, which if required to be produced were to be provided by February 13, 2024.

[21] On February 20, 2024 and February 22, 2024, the Board reached out to the parties for an update about the state of production. The Union replied that it had complied with the Production Order[7] but that it had not received "the documents or any communication from Mr. Brady with respect to the documents."[8] The Board asked for the Union's position on proceeding with the hearing in the absence of production. The Union responded that the documents were essential for the conduct of the delay hearing, that depending on when they were produced the Union might require an adjournment, and if the documents were not produced, the Union anticipated seeking to use the hearing dates to ask for an order that the DFR application be dismissed for non-compliance.

[22] The Board received a written response from Brady on February 26, 2024. In that response, he re-argued aspects of his production application, insisting that certain documents which the Board had found to be irrelevant to delay, should be produced. He also requested that "all relevant

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[7] *Email from Counsel for the Union*, February 20, 2024 at 3:58 PM.
[8] *Email from Counsel for the Union*, February 22, 2024 at 2:56 PM.

documents, including the MSDS and investigation reports, be presented before the medical documents", stating that "[t]his order of presentation would contribute to a fair and impartial evaluation of the case by allowing the court to consider the evidence in a comprehensive manner".[9]

[23] He also reargued the decision to hold a preliminary hearing on delay:

> *Moreover, I would like to draw attention to the significance of hearing the case on the merits. Witnesses from the company, such as Yarrow (HSE) or the site supervisor William, can provide valuable insights into the workplace safety conditions, the company's response to reported concerns, and their perspective on the events leading to my resignation.*
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> *Furthermore, the union representative involved in constructing the short-term disability arrangement holds essential information regarding the negotiations, considerations, and factors that influenced the inclusion of specific conditions in the coverage.*
>
> *In conclusion, a hearing on the merits would allow for a comprehensive understanding of the case, giving due consideration to all relevant aspects, including safety concerns, workplace conditions, and the subsequent handling of health-related matters.*[10]

[24] The Board decided to use the first date set aside for the hearing to hear the Union's request that the original application be dismissed. The Board noted that it was "proceeding on the basis that the documents have not been produced".

[25] The Board asked for written briefs in advance of the hearing. The Union submitted its brief on March 6, the day before the hearing. On the same day, at around 4 p.m., Brady showed up at the Board's office and filed certain documents.

[26] He provided no written explanation for the delay and no description as to how the documents he was filing were responsive to the Production Order. The documents he filed are listed in Appendix A of these Reasons. Also included with Brady's package was a memory card.

[27] When a self-represented litigant files documents, the Board's usual approach is to advise the litigant that any documents filed on the matter will be served on the other parties. Consistent with this and in accordance with the Board's usual practice, all documents (including attachments to pleadings) that Brady had previously filed with the Board had been served on the other parties.

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[9] *Letter from Brady*, February 22, 2024 (received February 26), at 2.

[10] The following day, on February 26, 2024, the Employer wrote to the Board stating that Brady was re-arguing the Board's decisions, and that it agreed with the Union's positions and that Brady's non-compliance and attempt to re-litigate amounted to an abuse of the Board's process. (*Letter from Employer*, February 27, 2024, at 2).

[28] In accordance with its usual approach, the Board scanned the paper documents and sent them to the Union at 4:41 p.m. on the same day, noting as well:

> *Additionally, there is an SD card (photo attached) that Mr. Brady has also provided but the Board does not have an SD reader at this time.*

[29] By the following day the Board staff had been able to procure a memory card reader, and so the Board provided the Union and Employer with the materials that were contained on the card. The Board provided those documents by email at 9:20 a.m.

[30] Those documents are listed at Appendix B of these Reasons.

[31] The hearing began at 9:30 a.m.

[32] The Union noted that it did not and could not know if Brady had complied with the Production Order, because the Union had not had an opportunity to review all of the documents it had received. The Union asked the Board to do one of the following as a result of Brady's non-compliance: dismiss the original application, exclude the evidence Brady would seek to rely on, related to the disclosure in issue; or stay the proceeding until Brady complied with the Order and count the delay against Brady in considering whether to dismiss the original application for delay.

[33] Turning to Brady, the Board reminded him that he had been required pursuant to the Board's Order to produce the documents to the parties, and asked Brady if he understood that requirement. He responded that he had understood that requirement.

[34] He indicated that he meant no disrespect to the Board or to counsel, but that he didn't believe that he could trust the respondents with his personal health records when they couldn't even produce a work site accident form. He then asserted that he had selected those health records that he believed the respondents did not have to support his theory of the case with respect to the merits of the DFR.

[35] The Board also asked him if he understood that the preliminary hearing had been scheduled to deal specifically with the issue of delay, and he responded "yes" but then proceeded to argue at length that the decision to deal with delay on a preliminary basis was improper and that the merits of the DFR application needed to be adjudicated first. While making this argument he made pointed statements such as "I feel it's up to the union and the company to prove that [he had a pre-existing condition] before we can move forward on a delay", among others.

[36] After listening to Brady's submissions for some time, the Board asked Brady why he was attending the Board hearings alone and without a support person. He explained that, for various reasons, he didn't have any support person available to him.

[37] The Board then asked Brady if his intention in providing the documents was to comply with the Production Order. He replied: "absolutely".

[38] The Board asked him to provide a description of the documents he had provided. He began by stating that the Union had requested the human rights questionnaire and related documents. He said "that's in there, some of it isn't in there because I ran out of paper printing. It's on my computer. That's why I brought my computer this morning and it can be in your hands in hours".

[39] He then said that he:

> *…looked at what the Union wanted and went through all the documents that I had and I said okay let's just do this let's give them everything and I still will. Anything you want. I can give it to you in the next few hours.*

[40] He said that he had nothing to hold back.

[41] The Board then proceeded to ask Brady specific questions about his compliance with the Board's Order. In response, he provided the following information:

1) He had no OHS documents.[11]
2) He had no correspondence or notes relating to discussions with this Board.[12]
3) With respect to the SHRC documents, he explained that he had not provided all of the documents under this heading because of printing and that the documents could be in the Board's hands within "hours".
4) He provided documents relating to the WCB complaint but not all that he had because they could not be printed. "They are saved and are ready to go."

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[11] The Union in its March 20 letter states that there is "only limited correspondence" under this heading, but Brady responded in the negative to a question whether he had any OHS documents in his possession, and the Board has found no such documents in the production materials.

[12] The Union in its March 20 letter described Brady's response as "verbally confirm[ing] his refusal to comply with the production of these documents". What occurred was as follows:
Vice-chair: Do you have any correspondence relating to discussions with this Board?
Brady: No ma'am because I respect the Board here and I don't think they had any intention of misdirecting me, you know…
Vice-chair: Do you have any notes?
Brady: None

5) He did not have correspondence with Employment Standards where it had redirected him to this Board prior to filing the complaints at issue. He said he would have to ask them for the correspondence and he had "never asked them".

6) With respect to "[a]ny correspondence with Service Canada/Employment Insurance regarding the adjudication of the respondent's claim for benefits", he admitted that he had not provided the correspondence that he had[13] but that he "will".

7) When asked if he had disclosed any entries in the notebook, he replied, "not yet ma'am, I just felt it from my perspective it wasn't important because they obviously had communication which puts me at the DSS when Mr. Yarrow said it was shut down" (a reference to the work safety issue he had allegedly raised before his resignation).

[42] During this exchange, the Board reminded Brady that he was required to provide only that which was in his possession and control, and that he wasn't required to make inquiries of external organizations. In particular, when asked about OHS documents, he stated that he had none but could make a Freedom of Information [FOI] request. The Board told him that was unnecessary. He replied that it would be helpful.

[43] The Board also asked if Brady understood that the Union could ask for the exclusion of not just the documents that he was refusing to produce but also the evidence relating to the documents he was refusing to produce. He responded that he was not aware.[14] He said again that "it's a work accident" and "if I'm to produce evidence the Union should have to as well. We have not seen any evidence from them at all".

[44] The Board reminded Brady that it was dealing with a narrow issue, which was the issue of delay in filing the DFR. He responded, "I respect that ma'am. I also believe ma'am that it should start at chapter one, not at chapter eight."

[45] The Board also asked him if he was refusing to comply with the Order in relation to the entries in the notebook. He replied, "no. If I have the notebook yet…I'll give it to you."

[46] With respect to the 152-page document package, he explained that this was the WCB file, that the SHRC file was contained within the WCB file, and that it had been printed twice and he

[13] "I have some correspondence".
[14] Despite having received the Union's brief in which it expressly sought exactly that.

didn't feel like it was necessary to provide two copies. He also explained that he had provided selected records but that there were more. In his view, it didn't make sense to provide the whole file, but "[i]f you would like to see the whole 152 pages, I would definitely give it to you ma'am."

[47] During the exchange, the Board had also asked Brady about his access to the internet, and he said that his access was "good", that he was working as a financial analyst, and that he receives the emails that the Board sends to him.

[48] He went on to say that some of the delay was caused by the Union and the Employer because he doesn't have their records.

[49] Under the circumstances, the Board decided to give Brady another opportunity to cure his non-compliance with the Board's Order, reserved its decision with respect to any remedy for non-compliance, and made the following Order [Second Chance Order]:

> *(a) that Lyle Brady shall provide copies of the documents in his possession, as set out in the December 12, 2023 Order, to the United Steelworkers of America, Local 5917 [United Steelworkers] and Evraz Recycling by 5:00 PM on March 8, 2024;*
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> *(b) that the United Steelworkers has until 5:00 PM on March 22, 2024 to raise any issues of non-compliance with the Board;*
>
> *(c) that the obligations of the United Steelworkers and Evraz Recycling in paragraphs 2, 3, and 4 of the December 12, 2023 Order in LRB File No. 144-23 remain in effect.*

[50] A hard copy of the Board's Production Order, dated December 12, 2023, was provided to Brady during the hearing.

[51] The Board also set new, tentative dates for a preliminary hearing, July 11 and 12, 2024.

[52] Then, after the Board had verbalized the Order, Brady asked for copies of documents from the Union and the Employer (for example, air quality test reports). The Board replied that he was rearguing the production issues that had already been decided, stated that the Board wouldn't be hearing from him about that issue, and asked if he understood. In response, he reiterated that it was a work accident.

[53] On March 8, 2024, at 4:57 p.m., Brady sent an email enclosing four PDF documents, without copying the respondents. The Board then provided these documents to the respondents the following Monday. The contents of the four PDF documents are listed at Appendix C of these Reasons.

[54] On March 20, 2024, the Union wrote to the Board indicating that Brady had provided those same documents to it directly on March 12, and that those documents were the only documents produced by Brady after the March 7 hearing. Due to Brady's non-compliance, the Union requested the following remedies:

> *…The Union submits, therefore that the board should either 1) order the dismissal of Mr. Brady's application, 2) order a stay for the period in which Mr. Brady refuses to produce documents, with any further delay being prejudicial to Mr. Brady, as outlined in the Union's submissions on March 7, 2024, or 3) [order] the exclusion of arguments tied to the documents that the applicant refuses to produce.*

[55] Brady did not respond to this letter.

[56] The Board proceeded to schedule a date for the hearing of the Union's renewed application to dismiss. In the course of scheduling, the Board set two consecutive deadlines for the receipt of the parties' availability. Brady did not respond by either deadline. On April 2, the Board reminded Brady that he had until the end of business that day to respond. He did not respond, and the hearing date was set for April 12.

[57] The parties were invited to file supplemental submissions but did not.

[58] Then, on April 9, Brady wrote to the Board seeking an adjournment of the hearing date due to new job responsibilities. He advised that he would be able to request a day off in the third week of May. The respondents opposed the request. Considering the significance for Brady of his newfound employment, the Board granted the request and set a new date, being May 23. The hearing proceeded on that date.

[59] At the hearing, the Board asked Brady to provide information about his compliance with the production Orders. Brady replied as follows:

> *Firstly, I respect you and the Board. And I have no intention to hide any information. And the same with the counsel. If it is something absolutely vital to this case, yes, I'll give it to you. Whatever you want. I'm not here to argue about a notebook. You want the notebook, I'll give you the notebook. It can be at the LRB Monday morning. The issue here is, why didn't you help me? Why did the Union just walk away? …*
> *…*
>
> *As far as compliance ma'am, I really honestly felt that I did comply and, um, there were things that I kept back that, I didn't redact them, because of the cost of covering things with black ink. What I did was omitted them. And what those omits were…are the medical evidence that I felt that the Union would use to build their case instead of bringing forward their own evidence.*

[60] He also stated that he had attended OHS, had received a document or documents from OHS through an FOI request in the last four or five months, and the response from OHS verified that he had attended at OHS on October 19, 2021.

Arguments:

Union:

[61] Under the circumstances, the Board should either:

> *1) order the dismissal of Mr. Brady's application, 2) order a stay for the period in which Mr. Brady refuses to produce documents, with any further delay being prejudicial to Mr. Brady […], or 3) an order for the exclusion of arguments tied to the documents that the applicant refuses to produce.*

[62] At this point, the alternative remedies that the Union had sought are "genuinely alternative".

[63] Brady has had five or six chances to comply: he failed to comply with the initial order, he gave incomplete disclosure on March 6, he failed to comply with the Board's Order to produce by March 8, he received the Union's response and did nothing, he requested an adjournment from April 12, and has failed to cure the issues in the meantime.

[64] The disclosure is disorganized, is incomplete and cursory, and there is no indication as to its responsiveness to the Orders.

[65] One could say that Brady has attempted to give the appearance of minimal compliance. However, even calling it minimal compliance is generous. There are areas in which Brady has willfully defied the Board's Orders (for example, he has explicitly stated that he doesn't believe that he has to produce the notebook). In other areas he has produced nothing and provided no explanation as to why said documents could not be disclosed. Finally, in some areas he has produced documents, but those are obviously incomplete.

[66] Brady was asked if he understood what he was required to do and if he understood the potential consequences of non-compliance and he answered both questions in the affirmative. At the same time, he continues to repeatedly reargue the merits of the DFR application when he knows that the issue before the Board is delay.

[67] This matter has become extremely onerous for the Union. The Union has gone to considerable expense and effort. Brady has not assisted in getting these issues addressed but instead has made it painful to sort through everything.

[68] The Union is suspicious that Brady intended to obfuscate the matter so completely that the Union wouldn't be able to respond effectively and would conclude that the existing production is good enough.

[69] Brady's conduct is an abuse of the Board's process. The Board has discretion to prevent a misuse of its procedure in a way that is manifestly unfair to a party to the litigation and to fashion a remedy that is proportionate to the breach of its Orders. Similarly, it is open to an arbitrator to refuse to admit a document into evidence or even to dismiss the underlying application if there is non-compliance with a production order. The Board may take a similar approach.

[70] Enough is enough. Brady should not be permitted to continue to defy and stymy the hearing process. If his application is not dismissed outright, the parties will still have a lot of work to do to address the defects before a hearing is held. This is work that Brady has demonstrated he doesn't want to do. Instead, he has demonstrated that he will continue to obstruct the Board's process and create more work than necessary for everyone. His obstructionist approach raises questions about whether he can be trusted and about whether his description of what he has and does not have is accurate.

[71] The Union is asking the Board to draw the line here. Brady's right to have his day in court is not unlimited. If he wants to have his day in court, he has to follow the rules. The person who is stopping him from having his day in court is Brady.

[72] Even if the Board did not dismiss the DFR application outright, it would have to exclude the evidence related to the un-produced documents. If that evidence were excluded, Brady would have no available explanation for the delay in filing. Without an available explanation, the DFR application would have to be dismissed for delay.

Employer:

[73] The Employer supports and adopts the submissions of the Union seeking that Brady's application be dismissed.

Brady:

[74] It was not Brady's intention to withhold information from the Board or from the other parties.

[75] That being said, this whole matter started as a workplace injury. The Union called Brady into a meeting, claimed that the accident hadn't happened, and said that he wasn't injured (without any medical evidence).

[76] Brady has asked for multiple reports relating to the workplace incident, none of which have been provided.

[77] The delay in question is not 18 months but four. For several months Brady was dealing with his health issues and attempting to find the right avenue to seek recourse. He did go to OHS and they have responded through FOI in the last four or five months. The response from OHS verifies that he attended at the office of OHS on October 19, 2021. Labour Standards would probably respond the same. This OHS document should be sufficient.

[78] When Brady went to OHS, he was told that they wouldn't do an investigation because he had resigned from his employment. He walked across the street to this Board and spoke with the Registrar who said that he didn't understand why OHS wouldn't look into his case, and then suggested that he try SHRC. So, then he went to SHRC. SHRC did a detailed review and sent him back to OHS. Finally, when he returned to this Board, he filed the DFR application.

[79] When he had first approached this Board, he had intended to file a DFR application. If he had not been re-directed, he would have filed the application much earlier.

[80] Among the documents provided are photos showing that the work site remains a safety hazard. This should be of assistance to the Union.

[81] The Union provided Brady with one collective agreement and the Board with another. It is interesting that all of the concerns he had expressed with the operative agreement were addressed and resolved in the new agreement. It is obvious that the Union cannot be trusted with his medical evidence. Given what they did to the collective agreement, they will change his medical evidence too, just to make their case.

[82] The OHS document (referring to the October 19, 2021 attendance) confirms that the delay is not 18 months but four and that for the first three months his health was very serious.

Applicable Statutory Provisions:

[83] The applicable statutory provisions are:

> ***6-100*** *The members of the board have the same privileges and immunities as a judge of the Court of Queen's Bench.*
>
> *. . .*
>
> ***6-103****(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed upon it by this Act or that are incidental to the attainment of the purposes of this Act.*
>
> *(2) Without limiting the generality of subsection (1), the board may do all or any of the following:*
>
> > *(a) conduct any investigation, inquiry or hearing that the board considers appropriate;*
> >
> > *(b) make orders requiring compliance with:*
> >
> > > *(i) this Part;*
> > >
> > > *(ii) any regulations made pursuant to this Part; or*
> > >
> > > *(iii) any board decision respecting any matter before the board;*
> >
> > *(c) make any orders that are ancillary to the relief requested if the board considers that the orders are necessary or appropriate to attain the purposes of this Act [.]*
>
> *. . .*
>
> ***6-104****(2) In addition to any other powers given to the board pursuant to this Part, the board may make orders:*
>
> *. . .*
>
> > *(c) requiring any person to do any of the following:*
> >
> > > *(i) to refrain from contravening this Part, the regulations made pursuant to this Part, or an order or decision of the board or from engaging in any unfair labour practice;*
> > >
> > > *(ii) to do anything for the purpose of rectifying a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board[.]*
>
> *. . .*
>
> ***6-111****(1) With respect to any matter before it, the board has the power:*
>
> *. . .*
>
> > *(b) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing or proceeding;*
> >
> > *(c) to do all or any of the following to the same extent as those powers are vested in the Court of Queen's Bench for the trial of civil actions:*

> . . .
>
> *(iii) to compel witnesses to produce documents or things;*
>
> . . .
>
> *(h) to order preliminary hearings or procedures, including pre-hearing settlement conferences;*
>
> . . .
>
> *(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:

[84] The primary issue is whether the Board should dismiss the DFR application outright.

[85] In support of this remedy, the Union relies on the following arbitration and court cases, *Budget Car Rentals* (Davie)[15], *Sagon* (SK CA)[16], *Toronto v CUPE* (SCC)[17], *Babos* (SCC)[18], *Blencoe* (SCC)[19], and *Abrametz* (SCC)[20], as well as an excerpt from *Canadian Labour Arbitration*.[21] The principles to be drawn from these authorities are:

a) In an arbitration proceeding, a grievance may be dismissed under the "abuse of process" doctrine if a party fails to produce documents ordered to be produced by an arbitrator. (*Budget Car Rentals*, at para 13);

b) Other possible remedies in the arbitration context include refusing to admit the document into evidence or granting an adjournment, or if the refusal continues, making an award of costs where authorized, or either allowing or dismissing the grievance. (*Brown & Beatty*, at 3-20 to 3-21);

c) A court has an inherent power to prevent the misuse of its procedure in a way that would bring the administration of justice into disrepute. This includes the misuse of procedure in a way that would be manifestly unfair to a party to the litigation. (*Toronto v CUPE*);

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[15] *Budget Car Rentals Toronto Ltd v U.F.C.W, Local 175*, 2000 CarswellOnt 5849 [*Budget Car Rentals*].
[16] *Sagon v Royal Bank of Canada (1992)*, 1992 CanLII 8287, 105 Sask R 133 (CA) [*Sagon*].
[17] *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63 [*Toronto v CUPE*]
[18] *R. v Babos*, 2014 SCC 16 [*Babos*].
[19] *Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307 [*Blencoe*].
[20] *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 [*Abrametz*].
[21] Donald J. M. Brown and David M. Beatty, in *Canadian Labour Arbitration*, looseleaf (5/2024 – Rel 3) 5th ed. [*Canadian Labour Arbitration*], at 3-20 to 3-21.

d) A court has power to prevent its process from being used as a means of vexation or oppression. (*Sagan* at para 19);

e) In criminal law, a stay of proceedings for an abuse of process will be warranted only in the clearest of cases. A three stage test applies for determining whether a stay of proceedings is warranted: 1) prejudice to a fair trial or the integrity of the justice system that will be manifested, perpetuated or aggravated through the conduct of the trial or by its outcome; (2) no alternative remedy capable of redressing the prejudice; and (3) where there is still uncertainty over whether a stay is warranted, the court must balance the interests in favour of granting a stay against the interest that society has in having a final decision on the merits. (*Babos*);

f) Inordinate delay may be found both where the delay compromised the fairness of the proceedings and where it caused personal prejudice to the individual involved. In the latter case, the pertinent questions relate to three areas - length of delay, significant personal prejudice, administration of justice brought in disrepute. This is intended to establish a very high threshold, not to be met on the basis of lengthy delay alone, but rather in the clearest and rarest of cases. (*Blencoe*), and;

g) The application of the *Blencoe* test is context-specific, requiring a fact-specific analysis, that can vary on a case-by-case basis. (*Abrametz*).

[86] The *Blencoe* line of case law involved institutional delay, which is not the type of delay that the Union has put in issue in this case.

[87] Despite this, *Blencoe* outlines some general principles about the doctrine of abuse of process, which provide some guidance to the Board:

- The doctrine is rooted in a court's inherent and residual discretion to prevent an abuse of process (para 33).
- A remedy is available through the doctrine where doing otherwise would offend "the community's sense of fair play and decency and to prevent the abuse of a court's process through oppressive or vexatious proceedings" (para 33, citing *Young*[22]).

[22] *R v Young (1984)*, 40 CR (3d) 289 (Ont C.A.), at 329.

- “Abuse of process is a broad concept that applies in various contexts” and is “characterized by its flexibility” unencumbered by “specific requirements” (paras 34, 35).
- “In administrative proceedings, abuse of process is a question of procedural fairness” (para 38).

[88] *Budget Car Rentals*, an arbitration decision, is more directly on point. There, the arbitrator relied on the abuse of process doctrine to dismiss the grievance, in part, because the grievor had failed to comply with a production order. The arbitrator found that it was only logical that if arbitrators had the authority to issue production orders that they also had the authority to enforce those orders:

> *13 Pursuant to these powers, I made an interim order adjourning the proceedings and requiring the grievor to provide the reasons for his nonattendance at the December 13, 1999, scheduled hearing date. I also ordered the grievor to produce certain documents relevant to the hearing and the issues in dispute. Logic dictates that, if arbitrators have the power to make these types of orders, there must also be authority to enforce the orders made. Arbitral jurisprudence indicates that as part and parcel of the authority to enforce, an arbitrator has jurisdiction to dismiss a grievance where there has been noncompliance with an order. Thus, a grievance may be dismissed or held to be inarbitrable under the "abuse of process" rubric, where a party fails to produce documents or matters ordered to be produced by an arbitrator (Re. Thompson Products (1970), 22 L.A.C. 85 (Roberts); Re. National Standard Company of Canada (1994), 39 L.A.C. (4th) 228 (Palmer)), or where a grievor refuses to participate in the grievance/arbitration process, or refuses to otherwise accept the authority of the arbitrator or arbitration process (Re. Beacon Hill Lodges Inc. (1990), 15 L.A.C. (4th) 323 (Craven)).*
>
> *14 In my view, an arbitrator should not lightly dismiss a grievance by reason of any "abuse of process", and outright dismissal of a grievance by reason of an alleged abuse of process should only occur in the clearest cases. In exercising the jurisdiction or discretion to dismiss a grievance by reason of an abuse of process however, it must also be remembered that the grievance and arbitration process was established to settle employment related disputes in a relatively expeditious and inexpensive manner. Within this context, it is reasonable to expect that the grievor, who is a party to that process, cooperate with reasonable requests made of him by his union, attend and participate in the hearing set up to deal with his grievance, and comply with the directions or orders of the arbitrator. In this case, the grievor's failure to attend, and his subsequent failure to comply with the order made in the interim award, has resulted in additional time and expense, to both the Union and the Employer.*
>
> *15 In all of the circumstances of this case I have concluded that it is appropriate to dismiss this grievance.*

[89] In *Canadian Labour Arbitration*, the authors acknowledge the authority of an arbitrator to dismiss a grievance in these circumstances:[23]

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[23] *Canadian Labour Arbitration*, at 3-20 to 3-21.

> *In any event, a request for production of documents should be made prior to seeking an order from the arbitrator. And unless knowledge of the documents only surfaced at the hearing, the request should be made prior to the hearing. Indeed, if no such request is made, the arbitrator may refuse to adjourn the hearing. However, where a timely request is made and there is no response to it or to an order for production, it is open to the arbitrator to refuse to admit the document into evidence or to grant an adjournment. And if the party's refusal continues thereafter, the arbitrator may make an award of costs payable by the recalcitrant party where he has the authority to do so, or may convene the hearing and either allow or dismiss the grievance.*
>
> *[citations removed]*

[90] Clearly, the Board does not simply adopt arbitral principles without careful consideration. However, the logic presented in *Budget Car Rentals* has some appeal. Furthermore, the Board both has the authority to make a production order, pursuant to clause 6-111(1)(b) of the Act and is required to perform those duties that are incidental to the attainment of the purposes of the Act, pursuant to subsection 6-103(1).

[91] The Board has long recognized that it has the authority to manage its own processes, and that in appropriate cases it has the authority to grant remedies pursuant to the abuse of process doctrine.[24] To be sure, the Board's abuse of process case law has focused on the application of the doctrine in response to allegations of re-litigation, and has been grounded in part on the Board's lack of jurisdiction to sit in appeal of its own decisions. However, the Board is the master of its own procedure, and it has a duty to ensure that its hearings are conducted in a manner that is fair to all parties concerned.

[92] When it comes to self-represented litigants, the Board has a responsibility to promote opportunities for all persons to understand and to meaningfully present their case regardless of representation.[25] The Board may consider an individual's representative status in determining how to address a technical breach. However, neither the status of an individual's representation nor their personal circumstances mean that the Board should allow a hearing to proceed in a manner that is manifestly unfair to a party to the litigation.

[93] The Board has considered the remedies as articulated by the Union. The Union has suggested that the remedies can be treated as alternatives to one another. However, the question as to whether the Board should dismiss the DFR application is inseparable from whether the Board should allow Brady to pursue his defense to the Union's delay application. The decisive

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[24] *Metz v Saskatchewan Government and General Employees' Union*, 2007 CanLII 68747.
[25] See, *The Statement of Principles on Self-represented Litigants and Accused Persons (2006)* (online) established by the Canadian Judicial Council, endorsed in *Pintea v Johns*, 2017 SCC 23, by the Supreme Court of Canada.

issue is whether Brady can pursue his defense to the Union's delay application in a manner that is fair. If he cannot, then the residual issues are purely academic. The DFR application will be dismissed for undue delay.

[94] To illustrate, in a delay matter, the ultimate question is whether justice can be done despite the delay. In considering this question, the Board inquires into the length of the delay, the prejudice to the Union, the applicant's explanations for the delay, and the applicant's level of sophistication. With an 18-month delay, prejudice is presumed. As explained in *Hartmier*[26] (where the delay was 13 months), even if the delay is "not so excessive or inordinate as occurred in other cases", it still requires "a satisfactory explanation". The applicant's explanations are assessed against whatever finding is made about how sophisticated the applicant is. As such, if the applicant does not provide an explanation, it is unnecessary to consider whether the applicant is sophisticated or not. Likewise, if the applicant is not able to justify the delay it is a moot point whether the presumed prejudice can be mitigated.

[95] On the other hand, if Brady can pursue his defense in a manner that is fair, then he should be allowed to do so. If he is successful and the DFR application is not dismissed for undue delay, then the DFR hearing will proceed.

[96] Next, in considering how to proceed, it is necessary to review the circumstances that have led to this point and to assess their significance.

[97] In the present case, Brady has repeatedly re-argued the Board's earlier rulings, including both the decision to hold a preliminary hearing on delay[27], and the decision to order the production of documents. He has done so in writing and in oral argument. He has also chosen to express his defiance of the Board's Orders by producing documents that were not ordered and that, in his view, pertain to the merits of the DFR. He has done this, seemingly, because he wants these documents to be taken into account now.

[98] Among his arguments is his insistence that if he is required to produce documents, then the respondents should also be required to produce documents. According to him, the documents that the respondents should produce pertain to the merits of the DFR.[28]

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[26] *Hartmier v SJRWDSU, Local 955*, 2017 CanLII 20060 (SK LRB) [*Hartmier*], at para 123.
[27] To be sure, the Union has also argued that the Board should reconsider the ruling on delay but has done so due to what it views as a change in circumstances.
[28] Specifically, the respondents should be required to produce documents related to his injury at the worksite (to support his claim that the Union failed to assist him).

[99] Despite being repeatedly reminded of the central issue (delay), Brady has not adjusted his approach but has instead persisted in challenging and re-arguing the Board's Orders. The pervasiveness of his approach was illustrated by the many occasions on which he chose to answer a Board inquiry with an assertion about the problems inherent in the existing process. At one point he went so far as to blame the delay on the Union not having provided the documents he had requested.

[100] Given his obstinance in this respect, the Board has no confidence that he will at any point take a step back and commit to focusing on the delay issue. Although it is not uncommon for parties to lose focus, Brady has demonstrated open defiance of the Orders and proceedings to the extent of having a direct impact on the available evidence.

[101] As for compliance, he did not comply with the requirement contained in the Board's Order to produce documents (on time) directly to the parties (despite providing documents to the parties after the deadline had passed).

[102] Nor did he comply with the Board's first deadline for production. He provided what documents he chose to provide approximately a month late and only after the Union filed its brief in support of its remedial requests, which included the request to dismiss the DFR. And even at that late stage, the documents he provided were incomplete.

[103] After having been given a second chance to comply, he expressly acknowledged that he selectively omitted medical evidence that the Union might use against him, and that he had in his possession a critical OHS document that, on the Board's review, appears nowhere in the documents that have been produced.[29]

[104] Moreover, Brady has provided documents in a piecemeal fashion, and with each opportunity to make submissions, has revealed new information about the unilateral decisions he has made.

[105] It is apparent that a primary cause of Brady's defective compliance is his unwillingness to accept the legitimacy of the Board's Orders. He has chosen to withhold documents because he believes that the Board should determine the merits of the DFR application, the respondents

[29] See, paragraph 110 of these Reasons. The Board has reviewed all of the documents that have been produced and there is nothing that has been produced that matches that description, even loosely.

should be required to produce documents and haven't done so, and the respondents will use his documents to their advantage.

[106] Where he has offered a more direct explanation for his non-compliance, that explanation is contradictory. At the March 7 hearing he stated that he ran out of paper. He offered that explanation despite having filed with the Board a memory card that contained many of the documents, and despite being in possession of the Board's and the respondents' email addresses.

[107] Also at the March 7 hearing, he claimed that he could provide all of the documents "in the next few hours" but to date he has not done so.

[108] The Board has no reason to believe that Brady did not understand the production Orders or the consequences of not complying with them, especially after the Board communicated that it was willing to hear the Union's request to dismiss the DFR. Brady's last-minute scramble before the March 7 hearing suggests that he understood that his non-compliance could put his application in jeopardy.

[109] Moreover, the Board has continually checked in with Brady and confirmed his understanding of the proceedings. At times, in response to questions from the Board he has indicated he has poor hearing, and the Board has reminded him to use his volume controls (in a virtual setting) or to ask the Board to repeat a question. As with his repeated autobiographical descriptions ("just a welder"), his reliance on his hearing difficulties has often materialized just as his reasoning has revealed one deficiency or another.

[110] Finally, the current state of Brady's response to the Production Order is as follows:[30]

> *a. Any correspondence, applications, or submissions made to the Occupational Health and Safety Division (OHS) in September 2021 and any notes from attendances on OHS in connection with the foregoing;*
>
> Brady advised at the March 7 hearing that he didn't have OHS documents. He then indicated that he "could" make an FOI request. The Board told him that that wasn't necessary. Then, on May 23, he indicated that he had received a document indicating his attendance on OHS on October 19, 2021, and that he had received that document through an FOI request in the last four or five months.

[30] References to the Union's positions are found in *Union Submission*, dated March 20, 2024.

He then indicated that the document was critical but did not produce it. His failure to provide that document is a failure to comply with the intent of this category of the Order, which was clearly designed around his own submissions that he had attended at OHS in September (not October).

His description of the timeline of the FOI request is difficult to reconcile with his submissions on March 7 that he "could" make an FOI request (not that he had made one), and that he was not at that time in possession of OHS documents.

Not only has he not complied with the intent of this part of the Order, but his description of the origins of the October 19 document raise more questions than answers about what documents are in his possession and control yet remain unproduced.

b. Any correspondence in relation to the respondent's discussions with the Saskatchewan Labour Relations Board (SLRB) …

Although the Union states that he has refused to provide these documents, Brady had indicated that he did not have any correspondence or notes under this heading (see, description of exchange with the Vice-chairperson, at footnote 12).

c. Any correspondence, applications, or submissions made to the SHRC in pursuit of a claim in relation to the events and circumstances alleged in this application…

The Union's observations about documents that are missing or incomplete do not necessarily mean that Brady has selectively held back these specific documents or parts thereof.

With respect to the further submissions made to the SHRC on February 2, 2023, Brady provided an email that he sent to the SHRC on this date. It might not be what the Union was expecting as a "submission" but that doesn't mean he failed to disclose it.

The March 29, 2023 email was not provided, despite the reference in the June 13 response, and the absence of any other document (in the production) that references this date in conjunction with an SHRC letter. The Board would expect this document to be in Brady's possession and control.

d. Any notes from attendances on the [SHRC] in connection with the above;

He has not produced any notes. (See discussion about notebook below).

e. Documents relating to the complaint to the Saskatchewan Workers' Compensation Board (WCB), including any originating documents, submissions, reasons for rejection, or correspondence in relation to this complaint now before the [SLRB];

Assuming that the 78-page document is a WCB file, the documents under this category have not been fully disclosed.

Furthermore, Brady has admitted that he has selectively omitted documents from the 152-page document, which he later explained was a WCB document.

f. The correspondence and documents in relation to the second attempt to file with OHS, as alluded to in the reply, including his referral to Employment Standards;

Brady stated that he had no OHS documents.

g. Any correspondence with Employment Standards where it redirects the respondent to the SLRB prior to filing the complaints at issue;

Brady stated that he was not in possession of this correspondence.

h. Any correspondence with Service Canada/Employment Insurance regarding the adjudication of the respondent's claim for benefits, including any submissions made with respect to the respondent's claim for benefits, and any correspondence providing Employment Standard's position on the respondent's benefits, including the approval in December 2021, as described in the respondent's submissions of June 13, 2023;

At the March 7 hearing, Brady admitted that he had not provided the correspondence (he explicitly stated that he had some correspondence with Service Canada) that is in his possession but that he "will". Since then, he has not provided any Service Canada Correspondence.

With respect to the second half of this Order, the reference to Employment Standards appears to be a typo lifted from the Union's application and not corrected by the Board. Brady did include correspondence with a third party about his difficulties in applying for EI benefits.

i. Entries in the "notebook" that is referred to in the respondent's response of June 13, 2023, in the period of September 2021 and February 14, 2023, which record any attendances on or correspondence with…

Entries in the notebook have not been provided.

To be fair, it is not entirely clear whether the notebook contains information that is responsive to the Production Order. Brady's reference to the notebook in his June 13 correspondence, which is the reference that the Order relies upon, is not an acknowledgement that he recorded his attendances on the organizations in issue. It is an acknowledgement that he had a notebook, but it refers to entries related to his employment:

> *Also, I presented the events on what really transpired on my employment with Evraz Recycling Regina and how many instances Union Steelworkers ignored my grievances. I had to recall the instances that happened with the help of my recordings on my notebook. Just imagine, I have to go through every instance and to present it. It's dragging me to be able to complete my submission.*

This passage might reveal what Brady meant when he replied to the inquiry about whether he had produced any entries ("not yet ma'am, I just felt it from my perspective it wasn't important because they obviously had communication which puts me at the DSS when Mr. Yarrow said it was shut down").

On the other hand, it might be yet another expression of Brady's preference for dealing with the merits of the dispute at the outset.

j. Should he decide to rely on them […]:

i. The 152-page document package of medical documents which the respondent described as explaining the reason for delay in filing his application in LRB File No. 030-23.

Brady has admitted that he has selectively omitted portions of this disclosure.

[111] So as not to unduly abridge Brady's opportunity to have his matter proceed, the Board has, wherever reasonable, given Brady the benefit of the doubt in the foregoing descriptions. Having done so, the Board has reached the following conclusions.

[112] First, it would be unfair to allow Brady to rely on his medical explanation. It was the medical document, which he held up to the screen at the virtual case management conference and which

he claimed would explain his defense, that he has now chosen to selectively produce. He has asserted that his medical explanation lies in that document but has refused to produce anything other than the portions which, in his view, are of benefit to him and his case. He has openly admitted that his motivation in making selective omissions is to prevent the Union from benefiting from his documentation.

[113] In the Board's view, there is no alternative remedy that would allow for a fair adjudication of this issue. Brady has made audacious admissions of non-compliance, for reasons which are fundamentally unfair to the Union. He has persisted in his assertion that the process is flawed and that he is justified in making selective omissions of these materials. The Board has no confidence that he will at any time resile from this approach.

[114] Second, it would be unfair to proceed to a hearing overall. Other than the medical evidence, there are at least four categories of documents that Brady has not produced in full, but which should be in Brady's possession: the document referring to the October 19, 2021 attendance; the last SHRC document; the Service Canada correspondence and, the missing documents from the WCB package. To be clear, even if there is overlap between the WCB documents and the 152-page document, Brady was fully aware that he was expected to comply with the requirement to provide WCB documents.

[115] There are many other documents that are missing and, to determine whether they are in Brady's possession, the Union would have to conduct further inquiries of Brady. In the Board's reasons for making the original Production Order, it explained why it was necessary for Brady to disclose the entire continuum of documents. Despite this, Brady has not provided comprehensible explanations about the documents that are in his possession, about the extent to which his production is responsive to the categories of documents that were ordered, or about his reasons for not producing the documents that have been ordered, other than to admit deliberate non-compliance.

[116] Instead, he has re-argued the merits of holding a delay hearing, pointed to the irrelevant documents that he has produced as being more important, and insisted that the respondents produce documents related to the merits. Particularly concerning is his willingness (whether in relation to the medical or not) to omit documents for the sole purpose of improving his case. Brady's approach seems designed to resist and to obfuscate while providing selected documentation to present the appearance of a modicum of compliance. Meanwhile, at each

hearing he attends (three in total for production alone) he discloses more information about how and why he is choosing not to comply.

[117] Given Brady's defiance of the Board's authority and its procedure, the Board cannot conceive of a scenario in which the Union would be able to participate in a hearing with sufficient knowledge of the extent and nature of Brady's compliance with the Board's Orders so as to be able to respond to Brady's explanations for the delay.

[118] Nor can the Board conceive of a scenario in which a fair hearing could proceed. The Board has given Brady an opportunity to cure his non-compliance and he has not done so. There is no alternative process that the Board can put in place to solve the problems that Brady has created.

[119] It is necessary for a litigant to participate in reasonable requests and to comply with the Orders of the Board. In this case, Brady's failure to comply with the Board's Orders on multiple occasions, coupled with his generally defiant approach, cannot be tolerated. If it were, it would bring the administration of the Board's proceedings into disrepute. Brady has misused the Board's proceedings in a way that, if allowed to persist, would be manifestly unfair to the other parties.

[120] Furthermore, with each new incident of non-compliance, Brady creates greater delay in the proceedings. There have been three hearings on the production issue, and there remains no prospect of a preliminary hearing being held.

[121] For all of these reasons, the Board cannot allow Brady to proceed to a preliminary hearing for the purpose of presenting his explanation for the 18-month delay. The DFR application remains, having been filed late, and with no available explanation. In the absence of an explanation, the DFR application shall be dismissed for undue delay.

[122] The DFR application is hereby dismissed. The dates scheduled for the preliminary hearing will be vacated.

DATED at Regina, Saskatchewan, this **17th** day of **June, 2024.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson

Appendix A

1) A return-to-work notification, dated August 14, 2021;

2) Record of Employment, issued September 1, 2021;

3) Email exchange between Evraz and WCB, dated December 17, 2021;

4) WCB Employer Memo, dated May 13, 2022;

5) Letter requesting third party documents, dated April 5, 2023, and exchange;

6) WCB partial package consisting of pages 9-31, 34, 35, and 74 of 78 total pages, including particulars of complaint, and medical referral rejection (dated September 6, 2021); and Work and Disability Questionnaire.

Appendix B

1) A manual for a respiratory filter;

2) A Wikipedia article explaining the meaning of “shortness of breath”’;

3) Photos, presumably of worksites at Evraz;

4) A Honeywell suggested respiratory production sheet;

5) WCB Letter, dated March 23, 2023, indicating that the claim remains disallowed, in follow up to a further letter, dated September 28, 2022;

6) WCB memo claim decision, dated March 21, 2023;

7) WCB medical consultation memo, February 27, 2023 and follow up memos;

8) Medical report, November 10, 2022;

9) Medical report, August 10, 2021;

10) WCB partial package consisting of pages 66-7, 71-3 (medical reports); and

11) Repeated documents previously provided.

Appendix C

1) "OHS Notes"
    - Emails from Workers Advocate, August 31, September 13, and September 27, 2022;
    - Email from Law Society library, August 24, 2022;
    - Email from WCB, September 22, 2022 (enclosing WCB Authorization Letter of Representation (blank), Injured Worker Appeals information sheet, Request for Copy of File (blank));
    - Email from Registrar of Court of Queen's Bench, August 23, 2022 (information about judicial review).
2) "SHRC 1"
    - Letter from SHRC (complaint assignment), May 12, 2022;
    - Email exchange between Brady and SHRC, February 6, February 2; November 18, November 16 and attached letter denying complaint, November 2, September 15, August 30, July 27, July 2, June 30, May 6, 2022;
    - Emails to Unemployed Workers Help Centre, October 2021 to March 2022.
3) "SHRC 2"
    a. Repeat emails from SHRC;
    b. Repeat emails to Unemployed Workers Help Centre;
    c. SHRC Intake Questionnaire and Particulars.
4) "Wcb Notes"
    a. WCB partial package, pages 37, 39, 40, 41, 43-47, 57-61 (plus, one page with numbering cut off);
    b. WCB Memos, February 28, January 18, 2023, July 9, 2021;
    c. Letter from WCB, August 10, 2022;
    d. Evraz Medical Report of Injury/Illness Form, August 7, 2021;
    e. Misc medical;
    f. WBC letter, March 9, 2022;
    g. WCB letter, no date;
    h. Repeat correspondence.