SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant v JOANN MORRISSEAU DICKSON, Respondent and WHITE SPRUCE PROVINCIAL TRAINING CENTRE, Respondent

LRB File Nos. 210-24 and 180-24; March 28, 2025
Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *SGEU v Morrisseau Dickson*, 2025 SKLRB 15

Counsel for the Applicant, Saskatchewan Government and General Employees' Union: Andrea Johnson

For the Respondent, Joann Morrisseau Dickson: Self-Represented

For the Respondent, White Spruce Provincial Training Centre: Ami Dzuba

Application for Summary Dismissal – Employee-Union Dispute – Delay – Application Dismissed as 21 months delay undue however justifications require further hearing

Application for Summary Dismissal – Employee-Union Dispute – No arguable case – facts plead on initial response do not disclose an arguable case – subsequent interactions read generously may support an arguable case – relief against employer outside of the Board's jurisdiction

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** The Saskatchewan Government and General Employees' Union ("the Union") has applied for a summary dismissal of Ms. Morrisseau Dickson's application. The Union argues that the application should be dismissed on the basis of delay and that there is no arguable case.

[2] LRB File No. 180-24 is an application by Ms. Morrisseau Dickson under Section 6-59 of the Act. It was filed on September 19, 2024. The following are the facts pled in support of the application:

> *I was not properly represented. I was terminated from Whitespruce in Nov/22. Initially, Majead Bourini attended the meeting. He told me that because I was on probation, there was nothing they can do. I was referred to Jeff Okere, whom I had phone conversations with, but was advised he quit his job.*

[3] The application pleads the following facts in terms of the outcome of the grievances:

> *I was unable to file a grievance, the person assigned to me quit his job. I was informed about it, because I inquired about why it was taking so long but nothing happened.*

[4] In terms of the response to internal appeals, the following is pled:

> *No appeal. I spoke with Amanda Freistad from the Union. She was not very helpful, as she came in after her employee quit, I was not aware.*

[5] In terms of the remedy sought, the application reads:

> *There is no outcome, I need remedy of a few things. There needs to be something in writing to indicate that as a community cultural coordinator, should not have to remove her ribbon skirt, similar to not having to remove a hijab or turban. A policy is needed. I have not been able to file a grievance, as I was not properly supported. I'd like to be made whole. Also, there is a need for cultural training at this facility.*

[6] In the reply to the summary dismissal, Ms. Morrisseau Dickson offers justifications for delay related to believing that the Union was working on the grievance and suffering a loss of a family member in June 2023.

Analysis and Decision:

Should this Application be dismissed on the basis of delay?

[7] This Board will summarily dismiss an application for delay where it is possible to do so on the basis of the pleadings and the reply for a summary dismissal: *Canadian Union of Public Employees, Local 5430 v Ruben G. Palao*, 2024 CanLII 121582 (SK LRB). However, where the justification for delay requires further consideration, summary dismissal is unlikely to be appropriate: *Regina Civic Middle Management Association v Baragar*, 2024 CanLII 34272 (SK LRB).

[8] Acceptable delay in duty of fair representation cases is measured in months and not years. The delay in filing the application in LRB File No. 180-24 is approximately 22 months from the date of termination to the date of the filing of the application of the Board. Without justification, this delay is inexcusable and a basis for dismissing the application.

[9] However, the reply and written submissions of Ms. Morrisseau Dickson offer a justification for delay. In particular, it is stated in the reply that Ms. Morrisseau Dickson believed that the Union was working on the file and that she suffered a loss of a family member in 2023 which delayed addressing this matter. These explanations are both possible justifications that may negate any

delay and ones which are inappropriate to determine on a summary dismissal application. Therefore, the Board declines to summarily dismiss on the basis of delay.

Should the Application be dismissed for no arguable case?

[10] Pursuant to s. 6-111(1)(p) of the Act, the Board may summarily dismiss a case where there is no arguable case. Generally, the Board approaches this on a similar basis as Courts do in striking claims on the basis that they disclose no reasonable cause of action. The Board set out its test for summary dismissal in *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB):

> *[8] The Board recently adopted the following as the test to be applied by the Board in respect of its authority to summarily dismiss an application (with or without an oral hearing) as being:*
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> > *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.*
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> > *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.*
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> *[9] Generally speaking, summary dismissal is a vehicle for the disposition of applications that are patently defective. The defect(s) must be apparent without the need for weighing of evidence, assessment of credibility, or the evaluation of novel statutory interpretations. Simply put, in considering whether or not an impugned application ought to be summarily dismissed, the Board assumes that the facts alleged in the main application are true or, at least, provable. Having made this assumption, if the Board is not satisfied that the main application at least discloses an arguable case, and/or if there is a lack of evidence upon which an adverse finding could be made, then the main application is summarily dismissed in the interests of efficiency and the avoidance of wasted resource.*

[11] The Supreme Court of Canada requires Courts to approach pleadings generously before striking them for no reasonable cause of action due to drafting inadequacies. Justice Karkansanis writing for the dissent (but not on this point) in *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19 (CanLII), [2020] 2 SCR 420 stated the approach as follows:

> *[87] A pleading may be struck or amended on the ground that it discloses no reasonable cause of action or defence (Rules of the Supreme Court, 1986, r. 14.24(1)(a)). When considering whether to strike a pleading on this ground, the question is whether the claim has "no reasonable prospect of success" (R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 17), or whether it is "plain and obvious" that the action cannot succeed (Hunt v. Carey Canada Inc., 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959, at p. 980). This is a high standard that applies to determinations of fact, law, and mixed fact and law. The facts pleaded are assumed to be true "unless they are manifestly incapable of being proven" (Imperial Tobacco, at para. 22).*

> *[88] On a motion to strike, the statement of claim should be read "as generously as possible and to accommodate any inadequacies in the form of the allegations which are merely the result of drafting deficiencies" (Operation Dismantle v. The Queen, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, at p. 451), because "cases should, if possible, be disposed of on their merits" (Montreal Trust Co. of Canada v. Hickman, 2001 NFCA 42, 204 Nfld. & P.E.I.R. 58, at para. 12). At times, a proposed cause of action is so obviously at odds with precedent, underlying principle, and desirable social consequence that regardless of the evidence adduced at trial, the court can say with confidence that it cannot succeed. But this is not often the case, and our common law system generally evolves on the basis of the concrete evidence presented before judges at trial.*
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> *[89] This is why claims that do not contain a "radical defect" (Hunt, at p. 980) should nevertheless proceed to trial. Courts should consider whether the pleadings are sufficient to put the defendant on notice of the essence of the plaintiff's claim (Holland v. Saskatchewan, 2008 SCC 42, [2008] 2 S.C.R. 551, at para. 15) and whether "the facts pleaded would support one or more arguable causes of action" (Anderson v. Bell Mobility Inc., 2009 NWTCA 3, 524 A.R. 1, at para. 5). In Markevich v. Canada, 2003 SCC 9, [2003] 1 S.C.R. 94, this Court explained that a cause of action is "only a set of facts that provides the basis for an action in court" (para. 27).*
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> *[90] The threshold to strike a claim is therefore high. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial (Imperial Tobacco, at paras. 17 and 21). The correct posture for the Court to adopt is to consider whether the pleadings, as they stand or may reasonably be amended, disclose a question that is not doomed to fail (Hunt, at p. 978, quoting Minnes v. Minnes (1962), 1962 CanLII 350 (BC CA), 39 W.W.R. 112 (B.C.C.A.), at pp. 116 and 122).*

[12] The Board also must take guidance from the Courts in dealing with the pleadings of self-represented litigants. The Court of Appeal of Saskatchewan discussed the generous approach to pleadings for self-represented litigants in *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 (CanLII):

> *[31] The decisions in both Reisinger and Thirsk address how Rule 1-3 and Rule 13-8 fit together. As noted in Reisinger, the requirement to identify the real issues in dispute – as per Rule 1-3 – operates to "inform, as the case may require, applications under Rule 7-9, especially those under Rule 7-9(2)(b), (c), (d) and (e). Poorly drafted claims in the sense that they are logorrheic may, depending on the degree, offend Rule 1-3 and Rule 13-8 and affect analysis under the aforementioned subrules of 7-9(2)" (emphasis added, at para 38).*
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> *[32] Thirsk followed and arguably expanded Reisinger. It is an important decision in two respects. First, Thirsk observed that technical non-compliance with the rules governing pleadings does not inexorably lead to the conclusion that the pleading under review must be struck. At paragraph 21 of that decision, the court emphasized the need for a reviewing court to focus on substance over form when dealing with an application to strike a claim for disclosing no reasonable cause of action.*
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> > *[21] All of this does not mean, however, that pleadings which fail to comply with Rule 13-8 and Rule 1-3 – and indeed, even pleadings which fall far short of doing so − must be struck. Reisinger illustrates that the focus in dealing with an application to strike all or part of a claim as disclosing no cause of action is on substance – that is, on whether the pleadings adequately serve their purpose − rather than form. The court found that the claims in contract and conspiracy were*

> *properly pled. It did so despite describing the statement of claim as (at para. 47) "undoubtedly prolix and hard to understand" and "logorrheic", or excessively wordy.*
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> *(Emphasis added)*

In reference to the result in Reisinger, the judge in Thirsk observed as follows:

[23] The point, in other words, was not the mere fact that the statement of claim breached Rules 1-3 and 13-8. It was that those breaches were such that the statement of claim did not serve the essential functions of pleadings. It failed to adequately define the issues in dispute and to give fair notice to the other side of what was claimed, in relation to all but the two causes of action which survived. The fact that it may have been possible for the court to find allegations which could be stitched together to disclose all essential elements of a claim was not enough.

See also Robin Hood Management Ltd. v Gelmich, 2014 SKQB 347 at para 5, 459 Sask R 183.

[33] The second important point that comes out of Thirsk concerns the issue of access to justice and the challenges posed by self-represented litigants. Thirsk identified the competing interests at play. On the one hand, the Foundational Rules are intended to promote access to justice through the promotion of a proportionate court process. In that vein, as the judge in Thirsk emphasized, "pleadings play an important role in achieving that result. The technical rules relating to pleadings, and the substantive concerns that underpin those rules, promote a fair and efficient adversarial process" (at para 25). To that end, an application to strike pleadings is designed to screen out claims having no chance of success that, if allowed to proceed, simply and unnecessarily drive up costs for the litigants. In this respect, fairness must be seen from the vantage point of both plaintiff and defendant.

[34] The obvious countervailing point is that strict adherence to the technical rules of pleadings may, in some circumstances, prevent access to the court process. This is "particularly so in relation to self-represented litigants" (Thirsk, at para 26).

[35] The delicate balance between a proportionate, fair and efficient adversarial process and access to justice was identified by Ball J. in Country Plaza Motors Ltd. v Indian Head, 2005 SKQB 442, 272 Sask R 198:

> *[13] Although the trend in Saskatchewan is to permit a party to have his day in court and not to examine pleadings with a microscope, a plaintiff's pleadings must nevertheless raise a justiciable claim against each of the defendants. Where it is impossible to distill a disparate number of allegations into coherent and material facts on which a cause of action against the defendants can be based, the claim will be struck. That is so whether or not the plaintiff is represented by legal counsel. In Saskatchewan Wheat Pool v. Kieling, 1993 CanLII 6701 (SK KB), [1994] 3 W.W.R. 714; (1993), 117 Sask. R. 218 (Q.B.), Armstrong J. stated at para. 43:*
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> > *[43] Lay people cannot be expected to draft precise, correct legal pleadings. Nevertheless, one cannot be allowed to do whatever one wants, however one wants whenever one wants and the court still be in control of its own processes.*

[36] In my view, the reasoning in Thirsk is sound and should be adopted.

[13] Considering the guidance from the Supreme Court of Canada and the Saskatchewan Court of Appeal, the basic formulation of *Roy* should still be followed, however it should be slightly modified. While all facts are assumed to be true, they are also read as generously as possible, and the Board must consider whether it is possible for the facts plead to establish a legal claim that may not be clearly pled.

[14] The application at issue in this case is a duty of fair representation claim. The Board set out the broad parameters of what must be established to show a breach of the duty of fair representation in *Applicant v SEIU-WEST*, 2024 CanLII 64163 (SK LRB):

> *[109] The Board has adopted the Ontario Board's explanation in Toronto Transit Commission that an applicant must demonstrate, to the satisfaction of the Board, that a union's actions were:*
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> *(1) "Arbitrary" – that is, flagrant, capricious, totally unreasonable, or grossly negligent;*
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> *(2) "Discriminatory" – that is, based on invidious distinctions without reasonable justification or labour relations rationale; or*
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> *(3) "in Bad Faith" – that is, motivated by ill-will, malice, hostility or dishonesty.*

[15] As it relates to defining what is arbitrary conduct, the Board has previously stated that errors and negligence do not establish a breach of the duty in *Ha v Saskatchewan Polytechnic Faculty Association*, 2024 CanLII 126796 (SK LRB):

> *[25] As noted above, Board has interpreted arbitrary conduct to include conduct that is "flagrant, capricious, totally unreasonable, or grossly negligent". This conduct must be distinguished from errors, omissions, or mere negligence which are not actionable.*
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> *[26] This distinction between non-actionable errors and gross negligence was drawn by this Board in Hargrave v. Canadian Union of Public Employees, Local 3833, 2003 CanLII 62883 (SK LRB):*
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> > *[34] There have been many pronouncements in the case law with respect to negligent action or omission by a trade union as it relates to the concept of arbitrariness in cases of alleged violation of the duty of fair representation. While most of the cases involve a refusal to accept or to progress a grievance after it is filed, in general, the cases establish that to constitute arbitrariness, mistakes, errors in judgment and "mere negligence" will not suffice, but rather, "gross negligence" is the benchmark. Examples in the jurisprudence of the Board include Chrispen, supra, where the Board found that the union's efforts "were undertaken with integrity and competence and without serious or major negligence. . . ." In Radke v. Canadian Paperworkers Union, Local 1120, [1993] 2nd Quarter Sask. Labour Rep. 57, LRB File No. 262-92, at 64 and 65, the Board stated:*
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> > > *What is expected of trade union officials in their representation of employees is that they will act honestly, conscientiously and without prejudgment or favouritism. Within the scope of these criteria, they may*

> *be guilty of honest errors or even some laxity in the pursuit of the interests of those they represent. In making decisions about how or whether to pursue certain issues on behalf of employees, they should certainly be alert to the significance for those employees of the interests which may be at stake.*

[27] Similarly, the Alberta Board noted the distinction between mere negligence and arbitrary conduct in Leduc v United Mine Workers of America, Local 2009, 2016 CanLII 156707 (AB LRB) at para 31:

> *[31] A myriad of cases across Canada have adopted the position that "mere negligence" is not sufficient to trigger a breach of the duty of fair representation. (See Canadian Labour Law Second Edition, George Adams, starting at 13-40.1 as well as Trade Union Law in Canada, Michael MacNeil, Michael Lynk, Peter Engelmann at 7.200). As reviewed by Adams at 13-40.2, "gross negligence" was commented upon by the British Columbia Labour Relations Board in Morgan v. Registered Psychiatric Nurses Association of British Columbia, [1980] 1 Can. L.R.B.R. 441, where the Board emphasized that a simple mistake or even handling a matter poorly does not breach the union's duty. Rather, "it is only when the alleged carelessness reaches that of a blatant or reckless disregard for an employee's interests that the duty of fair representation will be violated if the trade union is responsible for 'serious negligence'". The Ontario Labour Relations Board also looked at gross negligence as opposed to simple negligence. In Prinesdomu v. CUPE, Local 1000 (1975), 75 C.L.L.C. 16,196, the Board states at p. 1354: "flagrant errors in processing grievances – errors consistent with a 'not caring' attitude – must be inconsistent with the duty of fair representation".*

[16] On review of the application, the Board views the facts as pleading three distinct issues. The first is the initial response received from the Union that it would not grieve because it was a termination from probation. The second issue relates to the referral made to an employee of the Union who subsequently resigned. The third issue concerns the relief claimed against the Employer related to the merits of the underlying dispute with the Employer.

[17] On the first issue of the initial response, the facts as pled in the application do not meet the standard of arbitrary, discriminatory or bad faith conduct. If the facts are assumed to be true, the Union considered the grievance request and provided a response based on an analysis of the case. As noted by the Union in its submissions, it is a high bar to grieve a probationary termination, see: *Archie Tajonera Espinoza v United Food and Commercial Workers Canada Union, Local No. 1118*, 2017 CanLII 17176 (AB LRB). There are no facts that would support an allegation that the Union failed to consider the grievance request. Even if it is implied that the Union failed to give proper weight to the Human Rights issue over the probationary nature of the employment, the Union is permitted to make errors. Therefore, Ms. Morrisseau Dickson has not pleaded a breach of s. 6-59 of the Act as it relates to the first issue and it should be summarily dismissed.

[18] On the second issue of communications with the employee who resigned, the facts pled may establish a breach of s. 6-59. Reading the facts as generously as possible, it is arguable that it has been pled that the Union continued to discuss the merits of the case with Ms. Morrisseau Dickson and never reconfirmed its position that it would not proceed with the grievance. These facts may support an argument that the Union has breached its duty by failing to provide a final position, and this allegation cannot be summarily dismissed.

[19] On the third issue of the claim against the Employer, the Board lacks jurisdiction to determine this issue. The Board has Human Rights jurisdiction to the extent that issues are raised within its existing statutory jurisdiction. Under a s. 6-59 complaint, the Board's jurisdiction over employers is limited to issues related to the representation, including whether the employer participated in a union's breach or whether remedial relief must also be ordered against an employer to relieve against the breach of s. 6-59. While the Board has supervisory jurisdiction over issues of union representation, this jurisdiction does not extend to determining the merits of any underlying grievance or human rights complaint. Ms. Morrisseau Dickson has raised numerous issues against the Employer that are outside the Board's jurisdiction and the Board would summarily dismiss the relief sought against the Employer on that basis

[20] In summary, the Board will grant summary dismissal of part of the application as currently plead. The claim pled against the Union on the first issue does not meet establish an arguable breach of s. 6-59. The second issue on its most generous reading is permissible to proceed to further consideration by the Board. On the third issue, the claim against the Employer is outside the Board's jurisdiction and more appropriately addressed through the Human Rights complaint that has been filed.

Conclusion:

[21] As a result, the Board has determined that the Application for summary dismissal in LRB file No. 240-24 is granted in part. The sole issue to proceed relates to the interactions between Ms. Morrisseau Dickson and the Union after the initial denial and whether the Union met its duty under s. 6-59 in relation to those interactions. The Union may also raise its delay defense in any further submissions to the Board. An order to the same effect will accompany these reasons.

[22] The Board thanks the parties for their written submissions, which were of assistance in determining this matter.

DATED at Regina, Saskatchewan, this **28th** day of **March, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson