CONSTRUCTION AND GENERAL WORKERS' UNION, LOCAL 180, Applicant and BIRD CONSTRUCTION COMPANY LIMITED, Applicant v NICOLAE CHIPERI, Respondent

LRB File Nos. 245-24, 028-25 & 030-25; July 7, 2025
Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *Construction and General Workers' Union, Local 180 v Chiperi*, 2025 SKLRB 30

Counsel for the Applicant, Construction and General Workers' Union, Local 180:	Gary Caroline
Counsel for the Applicant, Bird Construction Company Limited:	Amanda Pizzardi
For the Respondent, Nicolae Chiperi:	Self-Represented

Application for Summary Dismissal – Employee-Union Dispute – No arguable case – facts plead do not disclose an arguable case – read generously case only pleads an argument of negligence – negligence simpliciter not actionable under duty of fair representation

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** The Construction and General Workers' Union, Local 180 ("the Union") and Bird Construction Company Limited ("the Employer") have separately applied for summary dismissal of Mr. Nicolae Chiperi's application in LRB File No. 245-24. The Union argues that the application should be dismissed on the basis of delay and that there is no arguable case. The Employer argues that the matter discloses no arguable case as the allegations are focused on the Employer and are not brought within the proper jurisdiction.

[2] LRB File No. 245-24 is an application by Mr. Chiperi under s. 6-59 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 ("the Act"). It was filed on December 17, 2024. The following are the facts pled in support of the application:

> *The evidence collected was not sufficient for a termination and the union was not agree with my termination. Union withdrew grievance and ignored alternative dispute resolution. Bird Construction should be reinstated immediately my job.*

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

> *The union no fairly represented me and act in a manner that is arbitrary, in bad faith advancing their employer. I was accused of something without proof*

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

> *False accusation and I have my legal rights to be represented and restore my reputation and be made whole from the damage done by the lies that have been told and the Union have a duty to fairly represent me.*

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

> *I ask that the dismissal be declared illegal. Recover from the employer unpaid wages for forced absence from the moment of dismissal until the dismissal is declared illegal.*

[6] In the reply to the summary dismissal applications, Mr. Chiperi filed a reply stating that:

a. a settlement was offered;
b. the termination was for alleged sexual harassment;
c. the investigation into the harassment allegation was not properly reported;
d. he has no recourse available for false accusation; and
e. the settlement was not clearly explained to verify understanding.

In reply, Mr. Chiperi also pled a timeline related to his Occupational Health and Safety argument against the Employer.

Analysis and Decision:

Should the Application be dismissed for no arguable case?

[7] Pursuant to s. 6-111(1)(p) of the Act, the Board may summarily dismiss a case where there is no arguable case. The board approaches this generally on a similar basis as Courts do in striking a claim for 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)("*Roy*"):

> *[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:*
>
> > *1. In determining whether a claim should be struck as disclosing no arguable case, the test is whether, assuming the applicant is able to prove everything alleged in his/her claim, there is no reasonable chance of success. The Board should exercise its jurisdiction to strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.*

> *2. In making its determination, the Board may consider only the subject application, any particulars furnished pursuant to demand and any document referred to in the application upon which the applicant relies to establish his/her claim.*

> *[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.*

[8] 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 pled to establish a legal claim that may not be clearly pled: *SGEU v Morrisseau Dickson*, 2025 SKLRB 15 (CanLII); *COPE, Local 397 v Kerr*, 2025 SKLRB 25 (CanLII) On a summary dismissal, the Board only considers the application itself and any particulars. No particulars were provided in this case. The Board will not consider the additional facts included in the summary dismissal applications at this time.

[9] 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:*
>
> > *(1) "Arbitrary" – that is, flagrant, capricious, totally unreasonable, or grossly negligent;*
> >
> > *(2) "Discriminatory" – that is, based on invidious distinctions without reasonable justification or labour relations rationale; or*
> >
> > *(3) "in Bad Faith" – that is, motivated by ill-will, malice, hostility or dishonesty.*

[10] As it relates to defining what arbitrary conduct is, the Board discussed 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.*

[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):

> *[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:*
>
> > *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".*

[11] The Board does not sit in appeal of the union and only reviews for breaches of the duty of fair representation, as noted in *Saskatchewan Government and General Employees' Union v Lapchuk,* 2025 SKKB 53 (CanLII):

> *[102] The duty of fair representation does not compel a detailed evaluation of the actions of the union nor does it envision necessarily a second guessing of the decisions of the union. As well, that duty does not elevate the Union's actions to a requirement of achieving perfection or even of acting without negligence. As a result, the SLRB is not to merely sit*

> *in appeal of any decisions taken by SGEU. In Haley v C.A.L.E.A. (No. 1), 1981 CarswellNat 602 (WL) (Can LRB), this principle was put as follows:*
>
> *30 It is not the Board's task to reshape union priorities, allocate union resources, comment on leadership selection, second guess its decisions, or criticize the results of its bargaining. It is our task to ensure it does not exercise its exclusive majoritarian based authority unfairly or discriminatorily. Union decision makers must not act fraudulently or for improper motives such as those prohibited by human rights legislation or out of personal hostility, revenge or dishonesty. They must not act arbitrarily by making no or only a perfunctory or cursory inquiry into an employee's grievance. The union's duty of fair representation does not guarantee individual or group union decision makers will be mature, wise, sensitive, competent, effectual or suited for their job. It does not guarantee they will not make mistakes. The union election or selection process does not guarantee competence any more than the process does for those selected to act in other democratic institutions such as Parliament or appointees to administrative agencies.*
>
> *31 But the law does not condone all good faith action. Some action or inaction is such a total abdication of responsibility it is no longer mere incompetence — it is a total failure to represent (e.g. Forestell and Hall [41 di 179, [1980] 3 Can LRBR 491], supra. Some conduct is so arbitrary or seriously (or grossly) negligent it cannot be viewed as fair. This is especially so when a critical job interest of an individual is at stake.*

[12] On review of the application, the Board views the facts as pleading three distinct issues. The first is whether the Union correctly assessed Mr. Chiperi's case. The second issue relates to the Union's decision to withdraw the grievance. The third issue relates to Mr. Chiperi's claims against the Employer.

[13] On the first issue of whether the Union correctly assessed the case, 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, read generously, Mr. Chiperi has alleged the Union was negligent. Simple negligence is insufficient to ground a claim under s. 6-59. The Union has a right to be wrong and Mr. Chiperi has not pled anything beyond the Union was wrong in how it assessed his case.

[14] On the second issue of the withdrawal of the grievance, the facts pled do not establish a breach of s. 6-59. Reading the facts as generously as possible, a grievance was withdrawn, however there are no facts pled to support that it was withdrawn without consideration or on a bad faith or discriminatory basis. The Union has control of a grievance: *Livingston v CUPE*, 2025 SKLRB 18 (CanLII). The Union was not required to agree with Mr. Chiperi's view of his case and reaching a different conclusion on the merits of proceeding with the grievance than Mr. Chiperi is insufficient to establish a breach without more.

[15] On the third issue of the claim against the Employer unrelated to the Union's representation, the Board lacks jurisdiction to determine this issue*: SGEU v Morrisseau Dickson*. The jurisdiction to determine the Occupational Health and Safety issue at first instance either lies with an adjudicator under Part IV of the Act or an arbitrator under s. 6-49. There are no facts pled that would support the Board finding it had jurisdiction to determine the validity of the discipline at issue in this case.

[16] Further, the Employer is correct in its reliance on *Roy*. The essential nature of this application is one directed at the Employer and not the Union. Mr. Chiperi is seeking to litigate the issue of the underlying merits. The Board's jurisdiction under s. 6-59 relates to supervision of union representation, the Board does not determine the underlying merits of employee-employer disputes that do not relate to Part VI of the Act. Mr. Chiperi appears to be using this duty of fair representation application as a collateral attack on the Occupational Health and Safety proceedings. This is an abuse of the Board's process and does not disclose an arguable case.

[17] In summary, the Board will grant summary dismissal of the applications of both Respondents as there is no arguable case, and the essential nature of the application is on matters outside the Board's jurisdiction.

Conclusion:

[18] As a result, the Board has determined that the applications for summary dismissal in LRB File Nos. 028-25 and 030-25 are granted. The Duty of Fair Representation Application in LRB File No. 245-24 is dismissed. An order to this effect will issue alongside these reasons.

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

DATED at Regina, Saskatchewan, this **7th** day of **July, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson