

MANITOBA LABOUR BOARD

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DISMISSAL NO. 1901

Case No. 23/09/LRA

C/R Case No. 24/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

Raymond Morin,

Applicant,

- and -

**THE MANITOBA GOVERNMENT AND GENERAL
EMPLOYEES' UNION,**

Respondent,

- and -

Manitoba Public Insurance Corporation,

Employer.

WHEREAS:

1. On February 2, 2009, the Applicant filed an application (the “Application”) with the Manitoba Labour Board (the “Board”) seeking certain remedies for alleged unfair labour practices by the Respondent, contrary to Sections 20(a) and (b) of *The Labour Relations Act* (the “Act”). The Applicant alleges that the violations occurred between February, 2006 and July, 2007 during which period the Applicant alleges that the Respondent, *inter alia*, ignored its duty to represent the Applicant following his filing of a complaint against Manitoba Public Insurance (“MPI”) for harassment, discrimination and unfair labour practices; chose not to take action against MPI under the collective agreement when requested to do so; chose not to act in the Applicant’s best interest regarding workplace accommodation issues; acted in an arbitrary manner when it informed the Applicant that it could conclude/settle the Grievance with or without the Applicant’s consent; and acted in an improper manner “...when it provided the Applicant with no option but to choose to resign or return to a hostile work environment...”. As to remedial relief, the Applicant requests that the Board order “...any just compensation that in the Board’s assessment is provided under article 34 (1)(d) and 150(1) of *The Labour Relations Act*”.
2. On February 6, 2009, the Applicant filed additional documentation with the Board.
3. On February 12, 2009 following an extension of time, the Respondent, through counsel, filed its Reply disputing the Application and requesting that the Application be dismissed

without a hearing. The primary basis for the Respondent's position is that the Application is untimely on account of undue delay, pursuant to Section 30(2) of the *Act*. Further, the Respondent asserts that, at the Applicant's own request, the Respondent negotiated a settlement on behalf of the Applicant in order to resolve a Grievance which the Respondent had filed on behalf of the Applicant on March 2, 2007 regarding alleged harassment and other employment concerns in the workplace. The Respondent further asserts that the Applicant did not want to return to work at MPI and instructed the Respondent to negotiate the settlement, the terms of which were incorporated in the Settlement Agreement executed by all parties, including the Applicant, on July 5, 2007. The Settlement Agreement and accompanying Release, also executed by the Applicant, on July 5, 2007, were attached to the Respondent's Reply as Exhibit "A".

4. On February 19, 2007, the Applicant filed further documentation with the Board seeking the assistance of the Board to compel MPI and the Respondent to disclose documents that had been denied to him by the other parties under the *Freedom of Information and Protection of Privacy Act* ("FIPPA").
5. On February 26, 2007, the Applicant filed with the Board a letter he had sent to the Law Society of Manitoba.
6. On February 27, 2007, following an extension of time, MPI, through counsel, filed its Reply requesting that the Application be dismissed without a hearing on a number of grounds, including:
 - The Applicant has unduly delayed the filing of the Application contrary to Section 30(2) of the *Act*.
 - The Respondent negotiated, on the Applicant's behalf, the Settlement Agreement, the terms of which resolved all outstanding employment concerns; and
 - The Application does not disclose a *prima facie* under Section 20 of the *Act*.
7. Based on a review of the Application, the Reply and the documentation attached thereto, the Board has determined, to its satisfaction, the following:
 - a. An oral hearing is not necessary as the matters at issue can be determined by a review of the written material filed by the parties.
 - b. The Applicant has unduly delayed the filing of the Application because the core events upon which the Applicant relies on the face of the Application itself are alleged to have occurred between February, 2006 and July, 2007, a period which is eighteen to thirty-six months prior to the filing of the Application. The Board relies on the principle expressed in a number of its decisions that an unexplained delay beyond a period of six to nine months following the event(s) complained of constitutes an unreasonable/undue delay within the meaning of Section 30(2) of the

Act (see the summary of these decisions in *James Kepron and Brandon University Faculty Association – and – Brandon University* (2004) M. L. B. Case No. 468/03/LRA, at pp. 36-40).

- c. Notwithstanding the finding in (b), the Board accepts that on or about July 5, 2007, the Applicant, the MGEU and MPI entered into the final and binding Settlement Agreement, for valuable consideration, and as a resolution to the Grievance which the Applicant had filed on March 2, 2007.
- d. Under the terms of the Settlement Agreement, the Applicant resigned from MPI on July 7, 2007; the Applicant received a substantial severance allowance and other monetary benefits; and he executed a general release of all claims in favour of MPI in exchange for the severance payment which he was paid under the Settlement Agreement.
- e. The Release executed by the Applicant on July 5, 2007, applied to all matters relating to the Applicant's employment with MPI up to July 5, 2007 and the Board notes that, in the Release, the Applicant warrants that he had been given ample opportunity to obtain and, in fact, did obtain advice from the Respondent regarding the Settlement Agreement and the Release itself and, further, he warranted that the Release was executed voluntarily "...without any influence or fraud or coercion or misrepresentation".

Based on the forgoing, the Board has determined the Application has no merit within the meaning of Section 140(8) of the *Act* and that the Applicant had unduly delayed filing the Application within the meaning of Section 30(2) of the *Act*. Accordingly, the Board declines to take any further action on the Application pursuant to Section 30(3) of the *Act*. In the result, the Application is to be dismissed.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by Raymond Morin on February 2, 2009.

DATED at **WINNIPEG**, Manitoba, this **1st** day of **April 2009** and signed on behalf of the Manitoba Labour Board by

"W.D. Hamilton"

W. D. Hamilton, Chairperson

WDH/mr

NOTES

REQUEST FOR REVIEW BY MANITOBA LABOUR BOARD OF A DECISION, ORDER, ETC. OF THE BOARD

- (a) Subsection 143(3) of *The Labour Relations Act* of Manitoba, C.C.S.M. Chapter L10 provides:

Board Review

143(3) the board or any panel of the board may review, rescind, amend, alter or vary any decision, order, direction, declaration or ruling made by it, and may rehear any matter if it considers it advisable to do so.

- (b) Request for review by the board of its decision, order etc. must be made by application to the board, within ten days of the making of the board decision, order, etc.

Section 17 of the *Manitoba Labour Board Rules of Procedure* (being *Manitoba Regulation 184/87R*, published in the Manitoba Gazette Part II) provides:

Application for Review of Board Decision

17(1) Where an application is made to the board under subsection 143(3) of the *Act*, to review, rescind, amend, alter or vary any decision, order, direction, declaration or ruling made by it, the applicant, in addition to the material required to be filed under section 2, shall

- (a) file a concise statement of any new evidence with such evidence being verified by statutory declaration;
- (b) file a statement explaining when and how the new evidence became available and the applicant's reasons for believing that the new evidence so changes the situation as to call for a different decision, order, direction, declaration or ruling; and
- (c) in the absence of any new evidence, file a concise statement showing cause why the board should review or reconsider the original decision, order, direction, declaration or ruling.

Time Limit for Review

17(2) Except by leave of the board, no application under subsection 143(3) of the *Act* for a review of any decision, order, direction, declaration or ruling made by the board shall be reviewed by the board after more than 10 days have elapsed following the date of the making of the decision, order, direction, declaration or ruling.

JUDICIAL REVIEW OF FINAL DECISION OF THE MANITOBA LABOUR BOARD

Subsection 143(6) of *The Labour Relations Act* of Manitoba provides:

Judicial Review of Final Decision

143(6) Notwithstanding any other Act, a final decision, order, direction, declaration or ruling, but not a procedural, interim or any other decision, order, direction, declaration or ruling, of the board or a panel of the board may be reviewed by a court of competent jurisdiction solely by reason that the board or the panel failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, if

- (a) the applicant for review has first requested the board or the panel, as the case may be, to review its decision under subsection (3), and the board or the panel has decided not to undertake a review, or has undertaken a review and rendered a decision thereon, or has failed to dispose finally of the request to review within 90 days after the date on which it was made;
- (b) the board has been served with notice of the application and has been made a party to the proceeding; and
- (c) no more than 30 days have elapsed from, as the case may be, the decision by the board or panel not to undertake a review, or the date of the decision rendered by the board or panel on the review, or the expiration of the 90 day period referred to in clause (a).

REASONS FOR DECISION

It is the policy of the Manitoba Labour Board that where a party to the proceedings is adversely affected by an Order or by a decision of the Board, within ten (10) calendar days of the date on which the Board's Order or decision was signed, that party may request the Board in writing to furnish written reasons for its Order or decision. The Board then may consider such request for reasons for its Order or decision and shall notify the requesting party as to whether reasons will be provided.