

MANITOBA LABOUR BOARD

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DISMISSAL NO. 1902

Case No. 24/09/LRA

C/R Case No. 23/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

Raymond Morin,

Applicant,

- and -

MANITOBA PUBLIC INSURANCE CORPORATION,

Respondent,

- and -

The Manitoba Government and General Employees' Union,

Interested Party.

WHEREAS:

1. On February 2, 2009, the Applicant filed an application (the “Application”) with the Manitoba Labour Board (the “Board”) seeking various remedies for alleged unfair labour practices contrary to Sections 7(h), 17(a)(iii), 17(b)(ii) and (v), 79, 80(1), and 80(2) of the *The Labour Relations Act* (the “Act”) and for alleged reprisals taken by the Respondent Manitoba Public Insurance Corporation (“MPI”) against the Applicant, contrary to Section 27(b) of *The Public Interest Disclosure (Whistleblower Protection) Act* (the “PIDA”). The Applicant alleges that the events complained of commenced in February 2006 “...when the Applicant presented his good faith disclosure of wrong doing and ...delivered his formal complaint against the management of MPI for harassment, discrimination and unfair labour practices” and that this conduct continued “...up until the time of the Applicant’s wrongful dismissal without cause in July/07.”
2. As to remedial relief, the Applicant requests that the Board:
 - Order MPI to reinstate the Applicant’s employment and benefits pursuant to Section 34(1)(a) of the *Act*;
 - Order MPI to cease and desist any further reprisals and unfair labour practices pursuant to Sections 34(1)(a)(h) and (i) of the *Act*; and
 - Order any compensation that the Board deems just pursuant to Sections 34(1)(d) and 150(1) of the *Act* and/or is allowed under *The Workplace Safety and Health Act* or the PIDA.

3. On February 6, 2009, the Applicant filed additional documentation with the Board.
4. On February 19, 2009 and February 26, 2009, the Applicant filed further documentation with the Board.
5. On February 27, 2009, following an extension of time, MPI, through counsel, filed its Reply disputing the Application and requesting that it be dismissed without a hearing. MPI advances a number of grounds for this position, including:
 - The Applicant has unduly delayed the filing of the Application and the Board ought to exercise its discretion under Sections 30(2) and 28(2) of the *Act* and the PIDA respectively.
 - The Application constitutes an abuse of the Board's process because the Applicant is attempting to re-litigate matters that were raised, addressed and resolved under the grievance process of the collective agreement between the Manitoba Government and General Employees' Union (the "MGEU") and MPI and which agreement governed the employment relationship between MPI and the Applicant. In particular, MPI says that the Applicant filed a grievance on March 2, 2007 (Exhibit "A" to the Reply) raising the same matters and employment complaints that are referred to in the Application and that, on July 5, 2007, MPI, the MGEU and the Applicant executed a binding settlement agreement (the "Settlement Agreement") (Exhibit "B" to the Reply) containing comprehensive terms of settlement, two of which were that the Applicant would sign a letter of resignation effective July 7, 2007 and that he would sign a general release of all claims in favour of MPI in return for payment of a severance allowance. A copy of the Release, as executed by the Applicant, was attached to the Reply as Exhibit "C";
 - The Applicant has breached the obligation to file a concise statement of material facts, as required by Board Rule 3(1), and has attempted to deceive the Board by failing to disclose the material and adverse fact that he has released MPI from the very matters covered by the Application. MPI submitted that the Applicant is precluded from bringing the Application; and
 - The Application does not disclose a *prima facie* case under either the *Act* or the PIDA.
6. 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). By reason of Section 28(2) of the PIDA, Section 30 of the *Act*, and, the Board's decisions relating to what time period(s) will constitute an "undue delay" equally apply to complaints filed under Section 27 of the PIDA. The voluminous material filed in support of the Application reveals that the Applicant possessed the information which was relevant to his Application either at the time of or shortly after the alleged breaches occurred or at least within the time period this Board has accepted as timely.
- 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 (Exhibit "A" to the Reply). A review of the Grievance and the far reaching redress sought therein reveals that the Grievance essentially covered the same issues/complaints which the Applicant is advancing in the Application.
 - d. Under the terms of the Settlement Agreement, the Applicant resigned 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 his union 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". As the Application is based on events which pre-date July 5, 2007, the Board is satisfied that the Applicant is seeking to re-litigate the same matters and, accordingly, the Application is without merit within the meaning of Section 140(8) of the *Act*;
 - f. Notwithstanding the findings in (b), (c), (d), and (e), the Applicant has also failed to establish a *prima facie* case under the PIDA because the Application does not

- disclose any facts which arguably can be said to constitute a “disclosure” of a “wrong doing”, as those terms are defined in the PIDA. Further, the Board is satisfied that the Application does not disclose any facts which arguably constitute a *prima facie* case under Sections 7(h), 17(a)(iii) or 17(b)(ii) and (v) of the *Act*.
- g. Sections 79 and 80 of the *Act* cannot be the basis of an unfair labour practice complaint under Part I of the *Act* because those provisions relate to substantive terms which must be included in collective agreements and, as such, are relevant to and may be enforceable under the grievance/arbitration procedures of a collective agreement.

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

N O T E S

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.