

**Manitoba Labour Board**

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**DISMISSAL NO. 1927**

**Case No. 91/09/LRA**

**IN THE MATTER OF: *THE LABOUR RELATIONS ACT***  
**- and -**

**IN THE MATTER OF: An Application by**

**S.W.F.,**

**Applicant,**

**- and -**

**Local 9074-USW District 3**

**Representatives: B.C.,**

**W.S.,**

**D.Z.,**

**Persons Concerned,**

**- and -**

**TC INDUSTRIES OF CANADA COMPANY WEST,**

**Respondent.**

**BEFORE: C.S. Robinson, Vice-Chairperson**

**SUBSTANTIVE ORDER**

**WHEREAS:**

1. On April 1, 2009, the Applicant filed an Application Seeking Remedy for Alleged Unfair Labour Practice contrary to Section 7 of *The Labour Relations Act*.
2. On April 23, 2009, the Applicant filed documentation with the Board, advising of its representative in these proceedings.
3. On May 1, 2009, following an extension of time, Counsel for the Persons Concerned, United Steelworkers Local 9074, United Steelworkers District 3, filed its Reply to the application.
4. On May 1, 2009, following an extension of time, the Employer, through Counsel, filed its Reply to the application.
5. On May 22, 2009, the Representative for the Applicant filed documentation with the Board, indicating it would be requesting additional information and particulars with respect to the

allegations, statements and new information contained in the Reply of TC Industries of Canada Company West.

6. On June 1, 2009, the Representative for the Applicant filed documentation with the Board requesting the additional information and particulars.
7. On June 3, 2009, the Board, following consideration of material filed, informed all parties that the Applicant's request, through its Representative, for additional information and particulars had been **DECLINED**.
8. The Board, following consideration of all material filed, has **DETERMINED** the following:
  - a. An oral hearing is not necessary as this matter can be determined by a review of the written material filed by the parties;
  - b. The Applicant alleged that "On or about August 31, 2007", the Respondent Employer committed an unfair labour practice contrary to section 7 of the *Act*. The Applicant claims that the Employer terminated his employment, effective September 1, 2007, when it issued him a Record of Employment dated December 20, 2007, which he admitted receiving on December 27, 2007. The Applicant claims that his employment was terminated "as a result of workplace accident/injury (sic) and the subsequent filing of a workers compensation claim".
  - c. The Applicant did not file his application with the Board until April 1, 2009.
  - d. The Respondent requested that the application be dismissed without a hearing for a number of reasons including that the Applicant unduly delayed in filing the application.
  - e. Section 30(2) of the *Act* provides that the Board may refuse to accept a complaint where its filing has been unduly delayed. Undue delay has been interpreted by the Board to mean periods of as little as six months in duration.
  - f. In *Kepron v. Brandon University Faculty Association* (2004), 103 C.L.R.B.R. (2d) 102, Vice-Chairperson Hamilton, as he then was, comprehensively reviewed section 30(2) of the *Act* and a number of the Board's decisions relating thereto. Commencing at page 137 he stated as follows:

First, section 30(2) is a discrete provision which applies to any unfair labour practice application brought before the Board. The discretion reserved to the Board under this section may be invoked regardless of whether or not a *prima facie* case is established under section 20. While the Board recognizes that the issues of "undue

delay" and "prima facie" case are often intertwined, the fact is the Legislature has empowered the Board the power to address "undue delay" as an independent issue....

So, leaving aside (for the moment) Kepron's reasons for the delay, there can be no question that, by any objective standard, three years constitutes undue delay within the meaning of section 30(2). In these circumstances, Kepron clearly bears an onus (whether one wishes to call it a legal or practical onus is of no moment) to convince the Board that the circumstances of his case are extraordinary. It is our opinion that he has failed to satisfy this onus....

Fourth, in its previous decisions, this Board has stated that its normal rule or practice is not to entertain a section 20 complaint if it is filed some six to eight months beyond the event(s) referred to in the complaint. We took this jurisprudence into account when arriving at our opinion. A brief reference to some of the Board's decisions is warranted. In *K. Scheurfeld - and - Canadian Paperworkers Union, Local 830 - and - I.W.A. Local 830 - and - Domtar Inc.* [1995] M.L.B.D. No. 4 (Quicklaw), ("*Scheurfeld*"), an employee filed a section 20 complaint some 28 months after his employment had been terminated, claiming that the union(s) had not taken reasonable care to represent him when they did not take his dismissal to arbitration. The unions submitted that a lapse of 28 months constituted undue delay. On the facts prevailing, the Board found that there had been undue delay and the application was dismissed. In *Scheurfeld*, the Board stated:

This Board must give reasonable meaning to the statute which creates it. The Legislature has said, under subsection 30(2), that matters are not to be "unduly delayed." The term "undue delay" has been interpreted by this Board to mean periods of up to approximately six or eight months. In the case of *Raoul McKay - and - University of Manitoba Faculty Association - and - University of Manitoba*, M.L.B. Case No. 186/94/LRA, Sept. 29, 1994, a delay of eight months was held to be undue delay. Similarly, in the case of *J.E. Labra - and - Sheet Metal Workers' International Association, Local 551 - and - E.H. Price*, [1992] M.L.B.D. No. 6, M.L.B Case No. 217/92/LRA, a delay of eleven months was held to be undue delay. In this case, the delay is well over two years.

The Legislature has used the term "undue delay." We are of the view that the lengthy period taken by the Applicant to file his application

is an extreme example of such delay. One of the primary functions of any adjudicative body, especially in matters of labour relations, is to deal with matters in a prompt and expeditious fashion. It is not really necessary for this Board to recite the detrimental effects that can occur because of delay. Memories may fade; witnesses may not be available; documentary material may be lost; and of equal importance is the fact that, if no proceedings have been taken in any reasonable period of time, the parties may well assume that the matter has been finalized or, at least, will not be proceeded with. It must also be noted, in this case, that the Applicant was attempting to establish some form of claim during this period. He attended at the Employment Standards branch; he obviously communicated with the union; he communicated with the Employer; and we are not sure if he communicated with anyone else. Perhaps he did not obtain the proper advice, or perhaps he did not seek advice from well-informed individuals. It is perhaps trite to state that ignorance of the law is no excuse, especially after such a lengthy period.

*In Andrzej Bal - and - United Food and Commercial Workers' Union, Local No. 832 - and - Burns Meats Ltd.*, [1997] M.L.B.D. No. 6 (Quicklaw), ("Bal"), an employee filed a claim under section 20, some twelve months after the union advised him of its decision not to proceed with his grievance. The Chairperson of the Board found that the delay of twelve months was excessive in the circumstances, and the application was, therefore, ruled to be untimely.

*In Wayne Smith - and - International Association of Machinists and Aerospace Workers - and - Motor Coach Industries*, [1998] M.L.B.D. No. 4, (Quicklaw), ("Smith"), the Board found that the applicant had failed to disclose a prima facie case in a dismissal situation and that no complaint was filed until almost a year after a "last chance agreement" was signed. The Board (Ms. D.E. Jones, Q.C. Vice-Chairperson) observed that,

...Normally the Board's practice is not to entertain unfair labour practice complaints which are filed more than 6 months beyond the facts complained of.

*In Juan Enrique Labra - and - Sheet Metal Workers' International Association, Local Union No. 511 - and - E.H. Price*, [1992] M.L.B.D. No. 6, (Quicklaw), ("Labra"), a delay of one year was fatal. The employee was aware of the union's intention not to proceed with his grievance for one year and, during most of that

period, he had access to legal representation. The application was dismissed on the basis of "undue delay" under section 30(2).

- g. In the present case, the Board is satisfied that the application was filed long after the Applicant knew all of the facts and circumstances set out in the application in support of his position that the Employer committed an unfair labour practice by terminating his employment in December of 2007. The delay in filing that complaint is greater than 16 months following the date upon which he alleged that he was terminated in contravention of the *Act*.
- h. Accordingly, pursuant to section 30(2) of the *Act*, the portion of the application concerning the Applicant's termination is dismissed.
- i. The Applicant further alleged that in October of 2008 the Employer refused to complete a supplemental accident/disability form on his behalf. The Board is satisfied that the particulars set out by the Applicant in support of his complaint regarding the failure of the Employer to complete the said forms, do not establish a *prima facie* violation of the *Act*, and that portion of the complaint is dismissed, pursuant to Section 140(8) of *The Labour Relations Act*, as it is without merit.

**T H E R E F O R E**

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by S.W.F. on April 1, 2009.

**DATED** at **WINNIPEG**, Manitoba, this 26th day of October, 2009, and signed on behalf of the Manitoba Labour Board by:

*"Original signed by"*

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**C.S.Robinson, Vice-Chairperson**

JD\*jjb/rb-s