

MANITOBA LABOUR BOARD

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CASE NO. 202/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

J.R.M.,

Applicant,

- and -

**W.P.H. GENERAL PRESIDENT
OF THE UNITED ASSOCIATION,**

Respondent.

- and -

BEFORE: Arne Peltz, Vice-Chairperson

This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.

REASONS FOR DECISION

The Applicant, J.R.M., was the Business Manager of UA Local 254 from 1983 to approximately June 30, 2007. He was unsuccessful in his bid for re-election for a further term of office. On September 10, 2008, a series of internal charges were laid against the Applicant by D.D., a Local 254 executive member, alleging violations of the union constitution, namely: misappropriation of union funds from the golf account; removal or destruction of union files and books; acceptance of unauthorized wages in the form of severance and vacation pay; and removal of an office laptop and camcorder.

The Respondent W.P.H. exercised his authority under Section 201 of the Constitution as General President to appoint G.C., a member of the union's local in Oshawa, Ontario, as a hearing officer in place of the Local 254 executive. A formal trial was held in Winnipeg on October 8, 2008 and G.C. found that the Applicant did remove and fail to restore approximately \$3,300.00 from the union's account. The Applicant admitted transferring the funds to his personal account but explained that his intention was to earn a greater rate of interest for the benefit of the union. G.C. recommended a finding of guilty on this charge but exonerated the Applicant on the charges related to removal of property. He held that the question of wages owing should be left for determination by the civil courts as litigation was already in progress on that matter.

On February 27, 2009, H. accepted G.C.'s report and found the Applicant guilty of misappropriation. The following penalty was imposed: fine of \$5,000.00; expulsion from the UA subject to a raised initiation fee of \$1,000.00 for readmission; denial of eligibility for local union office for two terms following the date of the decision. The Applicant appealed H's decision to the UA General Executive Board but the appeal was denied on or about April 28, 2009.

On June 30, 2009, the Applicant filed an application with the board pursuant to Section 19(c) of *The Labour Relations Act* alleging an unfair labour practice by the Respondent. Section 19(c) provides as follows:

“Every union, and every person acting on behalf of a union,

...

(c) who expels or suspends an employee from membership in a union by applying to him in a discriminatory manner the membership rules of the union ...

...

commits an unfair labour practice.”

By way of remedy, the Applicant asked that all charges be dropped and that his membership be reinstated with all benefits.

The Applicant attached a substantial package of material to his application including union documentation, credit union records, transcript from the trial before G.C. and various items of correspondence. The Applicant did not assert in his material that the Respondent applied any membership rule in a discriminatory manner. Nothing in the filing suggested discriminatory or adverse differential treatment.

The Respondent filed a Reply on July 31, 2009 and requested that the application be summarily dismissed for failure to show a *prima facie* case. According to the Respondent, the Applicant admitted to misappropriation during the trial, showed no remorse for his misconduct, admitted the hearing was fair and failed to allege any form of discrimination. The Respondent argued that Section 19(c) of the Act was not intended to furnish an additional level of appeal for aggrieved members in disputes with their unions.

The Board has reviewed the full record of filings in this matter and agrees with the Respondent that no *prima facie* case of discrimination under Section 19(c) of the Act has been asserted or established. The Applicant has not claimed that he was treated differently or inappropriately, either during the charging process or the adjudication process, as compared with other union members or any other comparator group. He confirmed to G.C. at the conclusion of the trial (Transcript, p. 132) that he had received a full and fair hearing including a full and complete opportunity to present all his evidence. In essence, the Applicant disagrees with the finding of guilt against him and the penalty imposed by H.

It is not the role of the Board to sit as a general court of appeal from union decisions regarding their members. As a result, the Board finds that there is no merit to the Section 19(c) application and no jurisdiction to consider the relief sought by the Applicant.

Pursuant to Section 30(3)(c) and Section 140(8) of the Act, the application is dismissed.

DATED at **WINNIPEG**, Manitoba, this 22nd day of December, 2009 and signed on behalf of the Manitoba Labour Board by

“Original signed by”

Arne Peltz, Vice-Chairperson

AP/ar/rb-s