



DISMISSAL NO. 1925
CASE NO. 229/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

**IN THE MATTER OF: An Application by
Fred Tait,**

Applicant,

- and -

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 987,**

Respondent Union.

BEFORE: W.D. Hamilton, Chairperson

SUBSTANTIVE ORDER

WHEREAS:

1. On August 4, 2009, the Applicant filed an Application (the “Application”) with the Manitoba Labour Board (the “Board”), pursuant to Section 132.1(1) of *The Labour Relations Act* (the “Act”), requesting an order of the Board determining that the Respondent Union (the “Union”) was in violation of Section 132.1(1) of the *Act* by failing to provide the Applicant with a copy of its financial statement for fiscal year ending December 31, 2007 on or prior to December 31, 2008. Further, the Applicant requests that the Board issue an order establishing the date by which the Union must provide to its members, upon request, a copy of the Union’s 2008 financial statement.
2. On August 14, 2008, following an extension of time, the Union, through Counsel, filed its Reply disputing the Application and requesting that it be dismissed without a hearing. The Union asserts that due to delays beyond its control, the Union itself did not obtain a final copy of the 2007 financial statement (the “2007 Statement”) until shortly before May 8, 2009 and that a copy of the Statement was furnished to the Applicant on May 8, 2009. The Union asserts, that, by reason of the Board’s dismissal of the Applicant’s complaint in Case No. 195/09/LRA, (See Dismissal No. 1920 issued on July 24, 2009), the Application is *res judicata* because this doctrine applies not only to arguments actually raised in previous litigation but also to arguments which might have been raised with reasonable diligence.

The Union points to the fact that the Applicant did refer in passing in Case No. 195/09/LRA to what he alleged was a delay in providing the 2007 Statement but did not actually apply for a declaration that there had been a violation of Section 132.1 of the *Act* due to the said delay. The Union alleges that the Applicant is now attempting to re-litigate the same matter in respect of the 2007 Statement. In the alternative, the Union asserts that there was no undue delay in providing the 2007 Statement to the Applicant because the Applicant received a copy shortly after the Union itself received the final copy. In respect of the Applicant's request for an order setting a time frame for the furnishing of the Union's 2008 Statement, the Union asserts that the Applicant is seeking a pre-emptive order and any such order would be both premature and inappropriate because the *Act* does not prescribe any explicit time limit for a union to provide its financial statements to members. The Union asserts that the 2008 Statement is still being prepared and undertakes to provide the Applicant with a copy within a reasonable time of the Union itself receiving the 2008 Statement.

3. On August 19, 2009, the Applicant filed further documentation with the Board asserting that the Board's Dismissal No. 1920 only addressed the adequacy of the 2007 Statement and the current Application deals with the timing of the availability of the 2007 Statement.
4. On September 2, 2009, the Union, through Counsel, filed further correspondence with the Board noting that under the Board's *Rules of Procedure* a reply to a reply is not allowed and requests that the Board disregard the Applicant's letter of August 19, 2009.
5. The Board, following consideration of the material filed by the parties, had 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. Based upon the findings of the Board in Paragraph 3 of Dismissal No. 1920 the Board determined that the 2007 Statement furnished to the Applicant on or about May 8, 2009 met the requirements of Sections 132.1(1) and 132.1(2) of the *Act*, and accordingly, the prior application was dismissed.
 - c. Although the Applicant referred to the time it took for the Union to provide him with the 2007 Statement in Case No. 195/09/LRA, the Applicant did not seek an order of the Board addressing the issue of delay *per se*. The Application in Case No. 195/09/LRA related to the "adequacy" of the 2007 Statement which was furnished to the Applicant on May 8, 2009.
 - d. The Applicant now seeks an order of the Board determining that the Union was in violation of Section 132.1(1) of the *Act* by failing to provide a copy of the 2007 Statement to the Applicant on or prior to December 31, 2008.

- e. Section 132 of the *Act* does not establish any time frame within which a union must provide a member with a copy of its financial statement for the latest fiscal year. The only reference to a time limit in Section 132 of the *Act* is found in Section 132.1(3)(a) where the Board can order a union, "... within the time the Board determines, a copy of the financial statement of its affairs to the end of its last fiscal year, verified by its Treasurer or another officer responsible for handling and administering its funds ...". This provision may only be invoked by the Board after it has found that a union has failed to give a member a financial statement "in compliance with this section." In Case No. 195/09/LRA the Board found that the 2007 Statement which was provided to the Applicant met the requirements of Section 132.1 of the *Act*.
- f. Having made its determination in respect of the 2007 Statement in Case No. 195/09/LRA, the Board is satisfied that it has determined all outstanding issues relating to the 2007 Statement and there is no valid basis for the Board, in this Application, to now determine that the 2007 Statement ought to have been provided to the Applicant on or before December 31, 2008. In seeking such an order the Applicant is, in essence, requesting that the Board establish a retroactive and mandatory time limit for when the 2007 Statement ought to have been furnished.
- g. As to the Applicant's request that the Board determine a date when the Union must provide the 2008 Financial Statement to its members, the Board accepts the Union's statement, made in its Reply, that the 2008 Statement is still being prepared and that, further, it will furnish the Applicant with a copy within a reasonable time following its receipt by the Union
- h. As Section 132 does not establish a defined time limit for the providing of financial statements, the Board is satisfied that it ought not set predetermined time limits on its own motion. Each case must be decided on its own facts. Based on the documentation before the Board, there is no basis for the Board to issue a pre-emptive order regarding the 2008 financial statements in this case.
- i. Based on the foregoing findings, it follows that the Application will be dismissed.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by Fred Tait on August 4, 2009.

DATED at WINNIPEG, Manitoba, this 11th day of **September, 2009** and signed on behalf of the Manitoba Labour Board by

"W.D. Hamilton"

W.D.Hamilton, Chairperson

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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.