Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Syndicat des communications de Radio-Canada (FNC-CSN),

applicant,

and

Ms. Z,

respondent,

and

Société Radio-Canada,

employer.

Board File: 30498-C
Neutral Citation: 2015 CIRB **752**
January 8, 2015

The Canada Industrial Relations Board (the Board) was composed of Ms. Elizabeth MacPherson, Chairperson, and Ms. Judith MacPherson, Q.C., and Mr. Graham J. Clarke, Vice-Chairpersons.

Parties' Representatives of Record

Mr. Guy Martin, for the Syndicat des communications de Radio-Canada (FNC-CSN);
Mr. François Garneau, for Ms. Z;
Ms. Marie Pedneault, for the Société Radio-Canada.

These reasons for decision were written by Mr. Graham J. Clarke, Vice-Chairperson.

Section 16.1 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all

of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine the application without an oral hearing.

I. Nature of the Complaint

[1] On June 11, 2014, the Syndicat des communications de Radio-Canada (FNC-CSN) (the union or the SCRC) filed an application for reconsideration of the Board's decision in *Ms. Z*, 2014 CIRB 727 (*Ms. Z 727*). The original panel of the Board had held a hearing in Montréal on January 14 and 15, 2014.

[2] Two members of the original panel (the majority) had determined that the SCRC had violated section 37 of the *Code* and had breached its duty of fair representation. The dissenting member, however, would have dismissed the complaint. Section 37 reads as follows:

> 37. A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.

[3] In its application for reconsideration, the SCRC argues that the oral evidence presented at the hearing could not lead to some of the Board's findings of fact. It produced an affidavit from a witness in support of its argument. The SCRC also submits that *Ms. Z 727* demonstrates that the Board deviated from the teachings in its case law.

[4] In her response, Ms. Z submits that the Board should not consider the allegation pertaining to the findings of fact, since the SCRC never asked for a written transcript of the hearing proceedings. Ms. Z is unable to refute the allegations given the lack of a transcript.

[5] Ms. Z also objects to the union's argument that the Board deviated from the "teachings in its case law" (translation). Ms. Z submits that the SCRC's arguments do not meet the tests established in the Board's case law to justify an application for reconsideration.

[6] The Board has decided to dismiss the application for reconsideration. Reconsideration is not an appeal. A party's disagreement with the findings of fact of the original panel is not a ground for reconsideration.

[7] The SCRC has moreover failed to satisfy the Board that the majority's interpretation of the *Code* constituted an error of law or policy. The fact that members of a panel can draw different legal conclusions from the evidence heard is not as such indicative of an error of law or policy.

[8] These are the reasons for the Board's decision.

II. Decision Under Review

A. Chronology of Events

1. May 15, 2012

[9] Following receipt from Ms. Z of video evidence of harassment on the part of Mr. M, the Société Radio-Canada (the employer or the SRC) suspended Mr. M. The latter was a member of the same bargaining unit as Ms. Z and held a position as shop steward.

2. May 17, 2012

[10] Ms. Z filled out a "Violent Incident Report" (translation) form and submitted it to the SRC.

3. May 23, 2012

[11] The SRC held a disciplinary meeting with Mr. M, which was also attended by Mr. Rufo Valencia, a shop steward. Ms. Z's name came up at least twice at the meeting and Mr. Valencia related that information to another union representative. The original panel made reference to that fact in paragraph 6 of *Ms. Z 727*:

> [6] In its response to the complaint, the union initially denied knowing the identity of the alleged harassment victim. However, this was corrected by counsel for the union a few months prior to the hearing into this matter, after he met with Mr. Valencia. The evidence shows that the complainant's name came up at least twice at the meeting of May 23, 2012, and this information was related to Mr. Ubald Bernard, a union representative, who had asked Mr. Valencia to attend the May 23 meeting with Mr. M.

4. May 28, 2012

[12] In a meeting also attended by Mr. Valencia, the SRC dismissed Mr. M, alleging just and sufficient cause. At one point after May 28 but prior to June 13, Mr. Valencia met with Ms. Z for about 45 minutes, during which he expressed his regret about what she had endured from Mr. M.

5. June 13, 2012

[13] Ms. Z then filed a grievance against the SRC, the SCRC and Mr. M, claiming compensation for damages.

6. June 21, 2012

[14] Ms. Z was declared unfit to work.

7. June 27, 2012

[15] Counsel for Ms. Z indicated to the SCRC that she would not be participating in an investigation conducted by the union. The purpose of the investigation was to determine whether or not the SCRC should represent Mr. M at arbitration to challenge his dismissal.

8. July 18, 2012

[16] Ms. Z informed the SCRC that she was waiving the mediation-arbitration procedure provided for in the collective agreement and asked that her grievance be referred to arbitration.

9. August 22, 2012

[17] The SCRC refused to send Ms. Z's grievance to arbitration and criticized her for categorically refusing to cooperate in an investigation.

10. August 30, 2012

[18] The SCRC filed a grievance on behalf of Mr. M to challenge his dismissal.

11. October 5, 2012

[19] Ms. Z filed her complaint with the Board, alleging that the SCRC had violated section 37 of the *Code*.

12. November 19, 2013

[20] Some 13 months later, the SCRC informed Ms. Z that, following discussions with the SRC, it would send her grievance to arbitration.

13. January 14 and 15, 2014

[21] The Board's hearing was held in Montréal.

B. Decision of the Majority

[22] In its reasons, the majority provided a detailed description of the evidence of the different witnesses heard at the hearing and reviewed the Board's case law in regard to the union's duty

of fair representation. The majority noted that a union always faces a difficult situation when it has to deal with a harassment complaint pitting two members of a same bargaining unit against one another:

> [65] Aside from those principles, **the Board has in its jurisprudence underscored the challenge faced by a union when it is required to represent more than one of its members in a situation involving workplace harassment**. The Board has stated that, in such circumstances, the union must proceed cautiously and thoughtfully.
>
> (emphasis added)

[23] The majority noted that the SCRC had not contacted Ms. Z prior to the filing of her grievance despite the fact that it had been aware of the situation. Further, the majority considered it curious that, in its written submissions, the SCRC had maintained for over a year that it had been unaware of the identity of Ms. Z prior to the filing of her grievance on June 13, 2012:

> [76] **Between May 23, 2012, and June 15, 2012, no one from the union, be it Mr. Bernard, Mr. Morin, or Mr. Levasseur, who according to the evidence heard knew or ought to have known that Ms. Z had filed a harassment complaint, contacted the complainant to investigate the matter or obtain her side of the story.** The only person who spoke with the complainant during that period was Mr. Valencia, but their meeting was nothing more than an informal meeting between co-workers. Further, according to Mr. Levasseur's oral evidence, Mr. Valencia's involvement in the case was limited.
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> [77] **It is curious to say the least that, in its written submissions filed on December 5 and 19, 2012, several months after Mr. M's dismissal, the union denied that the complainant's name had come up at the meeting of May 23, 2012, maintaining that it had not been until June 13, 2012, when the complainant had filed her grievance, that it had learned her name**—this despite the fact that Mr. Valencia had told Mr. Bernard that the alleged victim was Ms. Z on May 23, 2012. According to the evidence, the union did not admit to the fact that the complainant's name had come up on May 23, 2012, until around September 2013, more than a year after the events of May 28, 2012.
>
> (emphasis added)

[24] The majority determined that the SCRC had taken no action to ensure its objectivity in these exceptional circumstances:

> [79] A complaint of sexual harassment is a serious matter that could have major ramifications for both the alleged victim and the person accused of the harassment. **Yet, in the instant matter, the union took no immediate action to ensure its objectivity. Mr. Bernard took action to protect the interests of Mr. M when he learned that he was the subject of a disciplinary investigation and sent Mr. Valencia to attend the meetings between Mr. M and the employer.** Mr. Levasseur asked Mr. Morin to take on Mr. M's case as soon as Mr. M was dismissed.

> [80] In this matter, the union's actions do not show that it weighed the competing interests of its two members. Even before the complainant filed her grievance, the union's actions showed a lack of objectivity. **In fact, the union took several steps to protect the interests of Mr. M but did nothing to protect Ms. Z's interests when it learned her identity on May 23, 2012.** It was only after the complainant filed her grievance that the union decided to contact her to investigate. **And in doing so, the union failed to separate the two cases and asked the same individuals who represented Mr. M's interests to conduct the investigation into Ms. Z's case.**
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> (emphasis added)

[25] The majority also considered Ms. Z's decision, given her particular circumstances, not to meet with her union:

> [81] Further, it is useful to note that the complainant also claimed damages from the union in her grievance dated June 13, 2012. **Without stating a view on the validity of such a procedure, the Board finds that at the very least the fact that the union was named in the grievance added to the complexity of the situation and to the union's duty to act cautiously and handle Ms. Z's grievance objectively and separately from that of Mr. M.**
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> [82] The union submits that the complainant failed to cooperate in the investigation of her grievance of June 13, 2012. It maintains that it sought to obtain the facts concerning the occurrences set out in the complainant's grievance, as it does for all grievances, as early as June 15, 2012, and that that was why it had told Ms. Z on August 22, 2012, that it would not be referring her grievance to arbitration. The union further submits that, since it was unable to complete its investigation given the lack of cooperation on the part of Ms. Z and the employer, it had no choice but to file a grievance to challenge Mr. M's dismissal.
>
> [83] It is true that the union contacted the complainant's counsel toward mid-June 2012 to have the complainant take part in the investigation into the grievance she had just filed. On June 27, 2012, counsel for the complainant informed the union that his client had been declared unfit to work and that, since her grievance was against Mr. M, the employer and the union itself, she would not be disclosing her evidence against Mr. M.
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> …
>
> [87] **Thus, although the complainant's participation is a factor that may be taken into account in assessing the union's conduct, the fact that the complainant did not participate in the investigative process is not determinative in and of itself.** The Board considers that, while there may be a lack of cooperation on the part of the complainant in this matter, this does not exonerate the union in terms of its conduct in handling the complainant's harassment grievance.
>
> (emphasis added)

[26] The majority found that the SCRC had acted arbitrarily:

> [88] **On the basis of the evidence adduced, the Board finds that, as of May 28, 2012, the union had in its possession some major evidence that enabled it to grasp the full scope of the allegations and the extremely delicate nature of the case pitting one**

member of the unit against another, who was also a shop steward. It is worth noting that Mr. Valencia met the complainant before she was declared unfit to work. Mr. Valencia also attended the meetings between the employer and Mr. M. However, it seems that the union failed to take that evidence into account in conducting its investigation. It is also worth noting that the union chose to pursue the interests of Mr. M even though it also felt that he had not cooperated with it in connection with his dismissal grievance. This shows that the union already had some major evidence and that Mr. M's lack of cooperation did not prevent it from pursuing his interests. The union merely decided to pursue Mr. M's interests on the pretext that Ms. Z had refused to cooperate, without taking into account the underlying reasons for her refusal to participate in the investigation or the evidence that it already had in its possession.

…

[92] In light of the evidence before it, the Board considers that the union placed itself in a position of conflict of interest with regard to Ms. Z, in the face of a situation that required caution and thoughtfulness. **The dispute in question not only pitted two members of a same unit against one another, but also pitted one member against another who was also a shop steward.**

[93] The union's actions both before and after the complainant filed her grievance lead the Board to conclude that the union acted arbitrarily in this case and thus violated section 37 of the *Code*.

(emphasis added)

C. Dissenting Opinion

[27] The dissenting member considered Ms. Z's conduct and her refusal to meet with SCRC representatives and found that there had been no violation of the *Code*:

[115] Participation is therefore a determining factor for the Board when considering the union's conduct. Complainants have a duty to inform the union of potential grievances and ask it to act within the time limits provided for in the collective agreement. The union's conduct is then considered from the time the grievance is filed. **Failure to cooperate with the union generally results in dismissal of the complaint.**

…

[120] Ms. Z's position at that point in time was unequivocal. She did not want any meetings or any mediation; all she wanted was for the union to send the grievance to arbitration.

[121] Relations between the complainant and the union became very difficult if not irreconcilable. The filing of the grievance against Mr. M's dismissal on August 30, 2012, did not help matters.

…

[125] **In my view, the union was right to claim that it did nothing wrong. It never refused to file a grievance or to proceed to arbitration. It attempted to obtain the facts**

> **and investigate the matter several times, but the complainant, the employer and even Mr. M. refused to cooperate.**
>
> (emphasis added)

III. Reconsideration

[28] Reconsideration is not an appeal or a means of rearguing the original case. Despite the fact that section 44 of the *Canada Industrial Relations Board Regulations, 2001* (the *Regulations*) was repealed on December 18, 2012, the following excerpt from *Kies*, 2008 CIRB 413, still applies:

> [29] Section 44 of the *Regulations* is not drafted exhaustively and provides the Board with the flexibility to hear the rare case that does not fit within the enumerated grounds for reconsideration described above (see *Hurdman Bros. Ltd.* (1982), 51 di 104; and 83 CLLC 16,003 (CLRB no. 394)). **The enumerated grounds for reconsideration demonstrate that the reconsideration process is neither an appeal nor an opportunity for a party to reargue its case a second time before a differently constituted panel.**
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> (emphasis added)

[29] In *Williams* v. *Teamsters Local Union 938*, 2005 FCA 302, the Federal Court of Appeal noted the difference between an appeal and an application for reconsideration:

> [7] I am unable to say that the Board's Reconsideration decision was patently unreasonable. **A request for reconsideration is neither an opportunity to obtain a new hearing nor is it an appeal. In conducting its review of the Initial decision, the reconsideration panel was not to substitute its own appreciation of the facts for that of the original panel.** In this case, based on the facts before it, the original panel concluded that the Union was within its right not to pursue the matter further and there are no new facts or grounds now advanced by the applicant that would alter this conclusion.
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> (emphasis added)

[30] In *Buckmire*, 2013 CIRB 700 (*Buckmire 700*), the Board reaffirmed that the long-established grounds for reconsideration remain the same despite the repeal of section 44 of the *Regulations*:

> [36] The main grounds for reconsideration, and the applicant's obligations when pleading an application for reconsideration, remain as described below. Decisions of the Registrar under section 3 of the *Regulations* similarly remain subject to reconsideration.

1. New Facts

[37] This ground involves new facts which the applicant did not put before the Board when originally pleading its case. It is not an opportunity for the applicant to add facts it had omitted to plead.

[38] As summarized in *Kies 413*, *supra*, an application for reconsideration will include, at a minimum, the following information about the alleged new facts:

1. What the new facts are;
2. Why the applicant could not have put them before the Board panel originally; and
3. How those new facts would have changed the Board's decision under review.

[39] Generally, the original panel will consider applications raising this ground, given its advantageous position to decide whether "new facts" exist and their impact, if any, on its previous decision.

2. Error of Law or Policy

[40] Any alleged error of law or policy must cast serious doubt on the Board's interpretation of the *Code*. This creates a two-pronged test. A mere difference of opinion about the legal or policy interpretation will not justify reconsideration.

[41] A party must also have raised the point of law or policy issue in question before the original panel.

[42] The minimum pleading requirements for an allegation raising an error of law or policy remain as set out in *Kies 413*, *supra*:

1. A description of the law or policy in issue;
2. The precise error the original panel made in applying that law or policy; and
3. How that alleged error cast serious doubt on the original panel's interpretation of the *Code* or policy.

3. Natural Justice and Procedural Fairness

[43] Reconsideration may raise allegations that the original panel failed to respect the principles of natural justice or those related to procedural fairness.

[44] As described in *Kies 413*, *supra*, a party's minimum pleading requirements would address the following issues:

1. An identification of the particular principle of natural justice or procedural fairness in issue; and

2. A description of how the original panel allegedly failed to respect that principle.

E. Summary of Main Grounds for Reconsideration

[45] In summary, the main grounds for reconsideration may be described as follows:

> (*a*) New facts that the applicant could not have brought to the attention of the original panel and which would likely have caused the Board to arrive at a different conclusion;
>
> (*b*) Any error of law or policy that casts serious doubt on the interpretation of the *Code* or policy;
>
> (*c*) A failure of the Board to respect a principle of natural justice or procedural fairness; and
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> (*d*) A decision made by a Registrar under section 3 of the *Regulations*.
>
> [46] It is with the above principles in mind that the Board will address Mr. Buckmire's application.

[31] Accordingly, in this matter, the reconsideration panel must determine whether the SCRC has demonstrated that there are grounds in support of a reconsideration rather than whether it prefers the rationale set out in the majority decision or in that of the dissenting member.

IV. Issues

[32] Paragraph 32 of the application filed by the SCRC summarizes the three grounds for reconsideration:

> 32. With due respect to the Board, the SCRC submits to the Board that the decision of the majority in this matter is irrational in that:
>
> (a) the Board's findings of fact regarding the SCRC's breaches of its duty of fair representation are not supported by the evidence and disregard the uncontradicted evidence;
>
> (b) the Board is deviating from the teachings of its case law and misapplying said case law;
>
> (c) the Board does not have the power to issue an order of the nature of the one it issued in the absence of a breach by the SCRC of its duty of fair representation and should have dismissed the complaint.
>
> (translation)

[33] We will review those three grounds in the following paragraphs.

V. Analysis and Decision

A. The Board's findings of fact regarding the SCRC's breaches of its duty of fair representation are not supported by the evidence and disregard the uncontradicted evidence

[34] When it filed its application, the SCRC also filed an affidavit by Mr. Alex Levasseur, who had appeared before the original panel. Ms. Z objected to such evidence being filed on the basis that there was no written transcript of the hearing proceedings of January 14 and 15, 2014. In paragraph 5 of its reply, the SCRC indicated that "the testimony heard is not contradictory with respect to the key determining elements of the case having regard to the issue" (translation).

[35] The Board does not allow transcripts of its hearings other than in exceptional circumstances. This has been its policy for several decades, reflecting an amendment made to the *Code* in 1978. Since 1978, findings of fact made by the Board have not been subject to judicial review.

[36] The Federal Court of Appeal already addressed this policy, originally implemented by our predecessor, the Canada Labour Relations Board (CLRB), in *Eastern Provincial Airways Limited* v. *Canada Labour Relations Board et al.*, [1984] 1 F.C. 732:

> The Board's policy vis-à-vis the recording of its proceedings was explained at length in *Canadian Merchant Service Guild* v. *Canadian Pacific Limited* [1980] 3 Can LRBR 87, at pp. 91 ff. The Board had theretofore traditionally recorded its proceedings. The reason for the policy change appears to have been twofold. A verbatim record was, in its view, unnecessary once its decisions were no longer subject to judicial review on the grounds of error in law or perverse error in finding facts. For numerous reasons, verbatim transcription was seen as inhibiting the Board in its fulfilment of its mission as "a forum for labour relations principals—employees, employers and unions—not a court or forum for lawyers". It is to be remarked that the Board conducts many sorts of hearings, not just the sort in issue here. The rationale of the policy may be more plausible when applied to some sorts than to others.
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> It is a fair conclusion to be drawn from its reasons that the Board had determined that it could do its job better if those before it were discouraged from recourse to the Court. Parliament had already agreed. It had limited the grounds of judicial review to denial of natural justice and issues of jurisdiction. The Board, at pages 95-96 of the report, continued:
>
> > For the same reasons we have decided not to allow one party to have recording facilities at a hearing. To do so will reintroduce, on a selected basis, the atmosphere we seek to eliminate by discontinuing recording and act contrary to the purposes we seek to achieve. Although we see and our experience has shown us little advantage during the conduct of the hearing a recording may be of some advantage afterward. Otherwise why would a party want it? That advantage could be in written propaganda surrounding a dispute, or to play

> edited versions of the proceedings on radio or television, or to prepare future witnesses where there has been an exclusion of witnesses or adjournment, or for other reasons within the imagination of parties. The Board will not allow its proceedings and mediative efforts to be open to this potential for compromise.
>
> An obvious reason a party might want a record, not mentioned, is to facilitate pursuit of its remaining right to judicial review.
>
> A verbatim record would unquestionably have made easier the fulfilment by this Court of its duty. However, the refusal to permit EPA to make a verbatim record was not, per se, a denial of natural justice even though intended, *inter alia*, to make more difficult the pursuit of its remedy in this Court. Applicable as it was to both parties in this dispute, indeed to all parties in all disputes generally, implementation of the policy cannot be found to have been procedurally unfair to EPA. The refusal does, however, expose the Board to having issues of natural justice determined on evidence as to what happened led by the parties, while it cannot, itself, be heard on the subject unless it elects to file affidavits and offer their deponents for cross-examination.
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> (pages 745–747)

[37] The Board is not a civil court, and so does not record its hearings. Such formalism would be incompatible with the role of a labour relations tribunal.

[38] Ultimately, determination of the facts is a matter for the original panel. Evidence in the form of an affidavit for the sole purpose of contesting the facts as determined by the original panel cannot serve as the basis for an application for reconsideration.

B. The Board is deviating from the teachings of its case law and misapplying said case law

[39] This argument by the SCRC appears to be more in the nature of an appeal than an application for reconsideration. The SCRC wants the reconsideration panel to side with the dissenting member.

[40] Paragraphs 35 to 41 of its application illustrate this point:

> 35. The SCRC submits to the Board that those findings of the majority completely disregard the uncontradicted evidence before the Board, in particular the testimony of Mr. Alex Levasseur.
>
> 36. In fact, as explained by the latter, there was no reason for the union to step in prior to the filing of the grievance unless the complainant made a request since the priority for the SCRC in a harassment situation is to ensure that the harassment ceases and, in the case here, the harassment had ceased as a result of the suspension of the “alleged harasser.”

> 37. There was accordingly no reason for the SCRC to step in without the complainant asking it do to so.
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> 38. As the dissenting member of the Board rightly noted, prior to the complainant's filing of the grievance on June 13, 2012, the union had no information to lead it to believe that the complainant wanted to seek recourse against the employer.
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> 39. In finding as it did, the Board for no reason discounted the explanations provided by Mr. Alex Levasseur concerning the union's lack of action in relation to the complainant.
>
> 40. Similarly, in paragraph 76 of its decision, the Board fails to take into account the fact that Mr. Valencia invited the complainant to call on the SCRC and him if there was anything they could do.
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> 41. The Board is accordingly requiring that a union reach out to its members to check whether they wish to file a grievance against actions by the employer without being given any indication that such is the case, which deviates from the Board's case law.
>
> (translation)

[41] The SCRC is asking the reconsideration panel to consider the original complaint *de novo* and to support the rationale of the dissenting member. That is not the role of a reconsideration panel.

[42] The original panel described the facts on which it relied to decide as it did. There was no disagreement between the majority and the dissenting member as to the findings of fact. The reconsideration panel therefore accepts those facts for the purposes of the application for reconsideration.

[43] The Board has already explained how a reconsideration panel should approach alleged errors of law or policy, in *Buckmire 700*:

> [40] Any alleged error of law or policy must cast serious doubt on the Board's interpretation of the *Code*. This creates a two-pronged test. A mere difference of opinion about the legal or policy interpretation will not justify reconsideration.
>
> [41] A party must also have raised the point of law or policy issue in question before the original panel.
>
> [42] The minimum pleading requirements for an allegation raising an error of law or policy remain as set out in *Kies 413*, *supra*:
>
> > 1. A description of the law or policy in issue;
> > 2. The precise error the original panel made in applying that law or policy; and
> > 3. How that alleged error cast serious doubt on the original panel's interpretation of the *Code* or policy.

[44] A difference of opinion between the majority of the members of a panel and a dissenting member is not tantamount to an error of law or policy. Weighing of evidence heard can lead to differences of opinion, as in the matter under review, without creating any errors of law or policy.

[45] In the matter under review, the dissenting member considered Ms. Z's actions and found that the way she had acted had prevented the SCRC from representing her interests. He therefore concluded that, without greater cooperation from Ms. Z, the SCRC had no other obligations for purposes of the *Code*.

[46] The majority took a broader view. It raised the context of the exceptional circumstances, which involved sexual harassment. For instance, it considered the union's duty in the case of a sexual harassment complaint involving two members of the same bargaining unit. It also considered the fact that one of the members concerned was a shop steward.

[47] The majority took into account the SCRC representatives' knowledge of the facts and their actions prior to and after the filing of the grievance by Ms. Z. In her grievance, Ms. Z sought remedy from the SRC, Mr. M and the SCRC.

[48] In this matter, the SCRC has failed to discharge its burden of proving to the reconsideration panel that an error of law occurred and that that error cast serious doubt on the original panel's interpretation of the *Code*.

[49] The difference of opinion between the majority and the dissenting member in the matter under review derives from a different appreciation of the oral evidence. Such a difference is not a ground for reconsideration.

C. The Board does not have the power to issue an order of the nature of the one it issued in the absence of a breach by the SCRC of its duty of fair representation and should have dismissed the complaint

[50] Given the foregoing finding, it is clear that the majority did have the right to order redress pursuant to the powers conferred on it by section 99 of the *Code*.

[51] For all the above reasons, the Board dismisses the application for reconsideration.

[52] This is a unanimous decision.

Translation

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Elizabeth MacPherson
Chairperson

_____
Judith MacPherson
Vice-Chairperson

_____
Graham J. Clarke
Vice-Chairperson