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Reasons for decision

Mr. Douglas Staples,

complainant,

and

Canadian Union of Postal Workers,

respondent,

and

Canada Post Corporation,

employer.

Board File: 27318-C

CIRB/CCRI Decision no. 448

April 22, 2009

The Board, composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. John Bowman and André Lecavalier, Members, considered the above-noted complaint.

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 Canada Industrial Relations Board (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 this complaint without an oral hearing.

I - Nature of the application

[1] On February 24, 2009, the Board received from Mr. Douglas Staples (Mr. Staples) a duty of fair representation complaint pursuant to section 37 of the *Code*:

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.

[2] In that complaint, Mr. Staples alleged that the Canadian Union of Postal Workers (CUPW) violated the duty of fair representation when handling Mr. Staples' termination grievance.

[3] Mr. Staples' employer, Canada Post Corporation (CPC), had terminated him for cause on June 18, 2008.

[4] The parties completed their written submissions on March 24, 2009. The Board has considered them and decided to dismiss Mr. Staples' complaint for the reasons which follow.

II - Facts

[5] Mr. Staples worked at CPC as a mail sorter.

[6] On June 18, 2008, following an investigation, CPC terminated Mr. Staples for cause. The grounds generally alleged tampering with the mail. Prior to the termination taking place, the CUPW had assisted Mr. Staples during the interview stage of CPC's investigation.

[7] On or about July 9, 2008, the CUPW grieved Mr. Staples' termination and argued that CPC's decision lacked "just, reasonable or sufficient cause."

[8] CUPW representatives contacted Mr. Staples on or about November 12, 2008 and set up a meeting for November 17, 2008 to discuss his grievance.

[9] The CUPW retained outside legal counsel from an experienced labour law firm to attend the November 17, 2008 meeting and analyze the case.

[10] The CUPW referred Mr. Staples' grievance to formal arbitration before Arbitrator Wayne Thistle. The original arbitration date was January 15, 2009.

[11] Mr. Staples felt after the November 17, 2008 meeting that the CUPW would take his termination grievance to arbitration.

[12] As the CUPW and its outside counsel continued to review the case, however, doubts began to emerge about the strength of the case.

[13] The CUPW later asked Arbitrator Thistle to change the arbitration date given legal counsel's unavailability. The arbitration was later scheduled for March 18-20, 2009.

[14] On February 6, 2009, the CUPW and its outside counsel met again with Mr. Staples.

[15] At that meeting, the CUPW attempted to reconcile discrepancies in Mr. Staples' version of the facts. Mr. Staples explained in his submissions to the Board that he felt that the CUPW and its outside counsel had already decided against proceeding to arbitration.

[16] The CUPW advised Mr. Staples that one of its difficulties with the case was that a key witness he identified was in fact the individual who had complained about his actions. That person's complaint later led to Mr. Staples' termination.

[17] The CUPW also had concerns with a 56-page handwritten document that Mr. Staples had authored. The CUPW received that document, not from Mr. Staples, but rather from CPC. The document had been prepared in or about December, 2008, which was sometime after Mr. Staples' initial meeting with the CUPW and outside counsel.

[18] In the CUPW's view, the document confirmed the facts on which CPC had relied to terminate Mr. Staples for just cause. It also demonstrated to the CUPW that Mr. Staples continued to believe he had done nothing wrong. The Board assumes this factor was relevant to the CUPW given that genuine remorse is a factor an arbitrator can consider at the remedial stage of an arbitration.

[19] During the February 6, 2009 meeting, the CUPW and its outside counsel left the room to discuss the case. They concluded and advised Mr. Staples that there was no reasonable prospect of success.

[20] They then discussed with Mr. Staples the possibility of settling the matter with CPC.

[21] The CUPW contacted CPC during that same meeting and negotiated a Memorandum of Agreement (MOA). While the CUPW had hoped that CPC might offer some financial incentive as part of the settlement, the CPC would only agree to allow Mr. Staples to resign, in exchange for removing the termination documentation from his personnel file.

[22] Mr. Staples signed the MOA at the conclusion of the February 6, 2009 meeting.

[23] In his March 19, 2009 submission, Mr. Staples disputed the *bona fides* of the CUPW representative and its outside counsel.

[24] In addition, Mr. Staples believed CPC had falsified documentation related to his termination. He also argued the CUPW had not thoroughly investigated all of the facts.

III - The Duty of fair representation

[25] When the Board certifies a trade union, it cloaks it with the exclusive authority to represent all members of the bargaining unit. The *Code* at section 37 contains a duty of fair representation provision in order to ensure that a bargaining agent does not act arbitrarily, discriminatory or in bad faith with respect to a member's rights under the collective agreement.

[26] In almost all cases, the trade union has carriage of a grievance. It is up to the trade union to look at the facts of a case and consider whether or not a grievance should be taken to arbitration.

[27] There is generally no right for a member of the bargaining unit to insist that his or her grievance be taken to arbitration, unless an explicit clause in the collective agreement so provides.

[28] The Board will rarely interfere with a trade union's exercise of its discretion whether or not to proceed to arbitration, unless a complainant has demonstrated that a trade union acted in an arbitrary, discriminatory or bad faith manner. A mere disagreement with a trade union whether or not to go to arbitration is not sufficient to find a violation of the duty of fair representation.

[29] The Board has also held that a bargaining unit member must cooperate with the bargaining agent. If a member works at cross-purposes with the trade union, whether by commission or omission, then this may prejudice attempts to help him or her (see, for example, *Terry Griffiths*, [2002] CIRB no. 208; and 89 CLRBR (2d) 135).

IV - Analysis and Decision

[30] Mr. Staples has not convinced the Board that the CUPW acted in an arbitrary, discriminatory or bad faith manner.

[31] It is clear from the parties' extensive and helpful submissions that the CUPW attempted to assist Mr. Staples and weighed the facts when determining whether or not to proceed to arbitration.

[32] For example, the CUPW immediately filed a grievance putting CPC on notice that Mr. Staples' termination would be contested. They also retained outside counsel from an experienced labour law firm in order to analyze and assist with the case.

[33] While Mr. Staples argued that the CUPW did not fully investigate the matter, the facts demonstrate that the key witness Mr. Staples identified was in fact adverse in interest to him. Moreover, the CUPW analyzed Mr. Staples' lengthy handwritten document, which came into the

CUPW's possession not from Mr. Staples but rather from CPC, and concluded it seriously compromised the arbitration.

[34] The CUPW worked diligently with outside counsel in arriving at these important determinations.

[35] The CUPW then turned its mind to seeing what else, short of arbitration, they could do for Mr. Staples. They were able to agree to an MOA with CPC which allowed Mr. Staples' work record to be wiped clean in exchange for his resignation.

[36] In the Board's view, while Mr. Staples is not happy with his former bargaining agent, he has not demonstrated that the CUPW acted in any way other than as a responsible representative. The CUPW analyzed his case and made the difficult decision not to proceed to arbitration based on its analysis of the facts. The CUPW met its duty of fair representation.

[37] For these reasons, the complaint is dismissed.

Graham J. Clarke
Vice-Chairperson

John Bowman
Member

André Lecavalier
Member