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Reasons for decision

Mr. James Scot Crispo,

complainant,

and

National Automobile, Aerospace, Transportation and
General Workers Union of Canada (CAW - Canada),
Local 2000,

respondent,

and

MTS Allstream Inc.,

employer.

Board File: 28110-C

Neutral Citation: 2010 CIRB 527

July 5, 2010

The Canada Industrial Relations Board (the Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. John Bowman and David Olsen, Members.

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 this complaint without an oral hearing.

Parties' Representatives of Record

Mr. James Scot Crispo, for himself;

Mr. Ryan Stammer, for MTS Allstream Inc.; and

Messrs. Joel Fournier, Luc Delparte, and Dylan Gadwa, for National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW - Canada), Local 2000.

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

I - Nature of the Complaint

[1] On April 27, 2010, the Board received from Mr. J. Scot Crispo (Mr. Crispo) a duty of fair representation complaint alleging that the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW - Canada), Local 2000 (CAW) had violated 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] The complaint related to the CAW's decision not to take to arbitration Mr. Crispo's grievance contesting a staffing decision made by his employer, MTS Allstream Inc. (MTS).

[3] Before asking for a response to Mr. Crispo's complaint, the Board evaluated whether Mr. Crispo's complaint established a *prima facie* case that the CAW violated the *Code*. These reasons explain why the Board has decided to dismiss Mr. Crispo's complaint at this juncture.

II - Facts

[4] MTS hired Mr. Crispo on or about November 1, 1999. Mr. Crispo works as a Senior Communications Technician.

[5] On April 13, 2010, Mr. Crispo filed a grievance alleging a violation of article 5.04 of the collective agreement which deals with the rebalancing of backfill positions. Mr. Crispo alleged that MTS backfilled certain positions from workgroups not targetted for reduction, rather than backfilling the vacancies from targetted workgroups.

[6] MTS declined Mr. Crispo's grievance at Step One. Mr. Crispo then asked the CAW to move the matter to Step Two. Mr. Crispo asked the CAW's Mr. Luc Delparte to deal with the matter within 24 hours, given MTS had responded at Step One in only one hour.

[7] On April 21, 2010, Mr. Delparte advised Mr. Crispo that he had consulted the Union Executive (UE) which decided not to take Mr. Crispo's grievance to arbitration.

[8] The UE agreed generally with Mr. Crispo's interpretation of article 5.04 of the collective agreement, but indicated that they had reached an agreement with MTS on the specific rebalancing in question. They would accordingly not take Mr. Crispo's grievance further.

[9] Mr. Delparte explained the CAW's reasoning to Mr. Crispo in an April 21, 2010 email:

The agreement between the Union and the Company was made in order to protect members from involuntary layoff. This was accomplished by providing ERSA packages to senior members in regions not affected by the layoffs. The agreement allows the Union the right to grieve; however, redress was discussed and understood. In order to make things whole the company would deny the ERSA packages which would immediately make the rebalancing unneeded. This would also force union members to involuntary layoff. Effectively, there would be no rebalancing notices to begin with if the Union and the Company did not come to this agreement.

The UE have the right and the responsibility to make these decisions based on articles in the Collective Agreement; specifically Articles 9.04E and the "LOU: Joint Consultation". We do not take these responsibilities lightly and always try to work in the best interest of the membership as a whole, but we are often faced with difficult situations in which we know we will not be able to please everyone. I'm sorry that this agreement did not work out for you specifically, but the end result of this agreement allowed 3 individuals to get an ERSA, 3 other individuals to avoid involuntary layoff and 2 individuals with more seniority than you to work in an area, that such as yourself, they find very desirable. (The 3rd rebalancing notice [TJ] was sent directly to workgroups under Vanessa Hyjek and the successful candidate has not yet been identified).

[sic]

[10] Mr. Delparte also offered to meet further with Mr. Crispo to discuss the matter in greater detail.

[11] Mr. Crispo filed his duty of fair representation complaint with the Board on April 27, 2010 alleging the CAW had acted arbitrarily under the *Code*:

The Union has refused to take my Grievance to the next step despite the fact that the Union Executive feels that I have a valid case and the fact that they already have a similar case at Step 3 and may take that case to arbitration.

III - Analysis and Decision

[12] The Board conducts a *prima facie* case analysis for the numerous duty of fair representation cases it receives. This *prima facie* case analysis accepts a complainant's pleaded material facts as true and then analyzes whether those material facts could amount to a *Code* violation.

[13] The *prima facie* case analysis weighs the material facts as opposed to legal conclusions. A complainant who pleads a legal conclusion by alleging, for example, that certain conduct was arbitrary, discriminatory or in bad faith does not, by so doing, avoid the application of the *prima facie* case test.

[14] In *Blanchet v. the International Association of Machinists and Aerospace Workers, Local 712*, 2009 FCA 103, the Federal Court of Appeal endorsed the Board's use of a *prima facie* case analysis and its focus on the material facts:

[17] As a general rule, when a court presumes the allegations to be true, they are allegations of fact. That rule does not apply in findings of law: see *Lawrence v. The Queen*, [1978] 2 F.C. 782 (T.D.). It is for the court, not the parties, to determine questions of law: *ibidem*.

[18] It is true that, in the passage quoted, the Board did not specify that it was referring to the applicant's allegations of fact. However, the reference to the applicant's allegations cannot be anything other than a reference to allegations of fact. Otherwise, a complainant would need only to state as a conclusion that his or her union's decision was arbitrary or discriminatory for the Board to be forced to find that there had been a violation, or at least a *prima facie* violation, of section 37 of the Code and rule on the merits of the complaint. Thus, the complaint screening process would become a thing of the past.

[15] The issue can be described as follows: if the Board accepts all of Mr. Crispo's factual allegations as true, could it find the CAW violated section 37 of the *Code*?

[16] The duty of fair representation found in section 37 of the *Code, supra*, obliges the Board to examine a trade union's process in order to ensure that it did not act in an arbitrary, discriminatory or bad faith manner with regard to bargaining unit members' rights under the applicable collective agreement.

[17] However, the Board does not sit in appeal of a trade union's decisions and does not decide whether the trade union was "correct" in the conclusions it reached.

[18] A trade union often has to make difficult decisions which will benefit some members of the bargaining unit, with a corresponding detriment to others. For example, when dealing with contested issues involving seniority, the trade union's decision will not please all members. As long as the trade union did not act in an arbitrary, discriminatory or bad faith manner in arriving at its determination, the Board will not intervene.

[19] The material Mr. Crispo submitted satisfied the Board that the CAW turned its mind to his specific situation. In balancing the interests of bargaining unit members, the CAW made a decision that was not in Mr. Crispo's favour, but which did, in the CAW's view, arrive at a resolution that was the most beneficial for the bargaining unit as a whole.

[20] The Board is satisfied that the CAW understood the facts of Mr. Crispo's situation and negotiated a resolution with MTS which was in the bargaining unit's overall interest.

[21] Mr. Crispo is entitled to have a difference of opinion with the CAW concerning the application of the collective agreement. But that alone does not demonstrate that the CAW acted in an arbitrary, discriminatory or bad faith manner, as those terms are used in section 37 of the *Code*.

[22] In accepting all of Mr. Crispo's factual submissions as true, the Board cannot find that a *prima facie* case exists. As a result, the Board dismisses Mr. Crispo's complaint.

[23] This is a unanimous decision of the Board.

Graham J. Clarke
Vice-Chairperson

John Bowman
Member

David Olsen
Member