

Manitoba Labour Board

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ORDER NO. 1398

C/R Order No. 1383

Case No. 448/06/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An application by

C.T.,

Applicant,

-and-

INTEGRA CASTINGS

Respondent/Employer,

-and-

Winkler Foundry Employees Association,

Certified Bargaining Agent.

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

WHEREAS:

1. On December 5, 2006, the Manitoba Labour Board, by Order No. 1383, ordered Integra Castings to:
 - a) Re-instate the Applicant, C.T., in his former employment forthwith, and
 - b) Compensate the Applicant, C.T., for lost income, less amounts received in mitigation, from the date of termination to his date of re-instatement.

The Board retained jurisdiction with respect to the issue of quantum in the event that the issue of compensation cannot be resolved by way of settlement between the parties, within sixty (60) days from the date of the Board's Order.

2. On March 15, 2007 and April 12, 2007, the Applicant filed documentation with the Board, requesting that the Board enforce its judgment.

3. On May 7, 2007, the Registrar informed all parties that the Board, following consideration of material filed, and in the absence of information to the contrary, that the Board's Order had not been implemented or settlement concluded between the parties, determined it would proceed to hearing, on an expedited basis, to address the sole issue of quantum.
4. On May 23, 2007, the Board conducted a hearing, on the sole issue of quantum, at which time all parties appeared before the Board, the Employer being represented by Counsel, and evidence and argument presented by the Applicant and Employer.
5. At the commencement of the hearing, Counsel for the Employer raised a preliminary challenge as to the Board's jurisdiction to deal with the matter, and requesting an adjournment of the hearing. Counsel further informed the Board that judicial review proceedings had been commenced.
6. Following a brief recess, the Board reconvened and informed all parties that it was satisfied that it had jurisdiction to proceed, noting that the commencement of judicial review does not stay the Board's proceedings. The Board confirmed it intended to proceed on the sole issue of quantum.
7. Both the Applicant and the Employer put forward different methods of determining the quantum of compensation payable to the Applicant. The methods proposed by both the Applicant and the Employer were based, to some extent, on facts and information which were not properly in evidence before the Board relating to issues such as overtime and sick days. Accordingly, the Board did not adopt any of the methods proposed by the Applicant or the Employer but instead utilized a method of determining quantum which was based on the best and most reliable evidence which was introduced before the Board. The quantum of compensation payable to the Applicant was therefore determined on the following basis:

Entitlement: \$13.17 per hour
 2080 hours or 260 days per year

Less: Amounts received in mitigation, with such compensation to be calculated up to and including the date of hearing into the issue of quantum, namely **May 23, 2007**, and accruing thereafter on a per diem basis, up to the date of re-instatement.

T H E R E F O R E

The Manitoba Labour Board **HEREBY ORDERS** INTEGRA CASTINGS to compensate the Applicant for lost income less amounts received in mitigation, and less statutory deductions, from the date of termination to his date of re-instatement, as follows:

For the Calendar Year 2006:

Entitlement:

March 10 to Dec. 31, 2006\$22,230.96
211 days @ \$105.36 per day
(8 hours x \$13.17 per hour)

Less:

Compensation received – as per
T-4 – Convey-All Industries Inc. \$7,995.56
T-4 – Abrams Mfg. & Consulting... \$3,114.17
Sub Total\$11,109.73

Sub Total for Calendar Year 2006..... **\$11,121.23**
(*\$22,230.96 - \$11,109.73*)

For the Calendar Year 2007:

Entitlement:

January 1/07 to May 23/07 (103 days)
103 days x \$105.36 per day\$10,852.08
(8 hrs. x \$13.17 per hour)

Less:

Compensation Received
103 days at \$92.00\$9,476.00
(8 hrs. x \$11.50 per hour)
Sub Total for Calendar Year 2007..... **\$1,376.08**

Sub-Total **\$12,497.31**
(*\$11,121.23 + \$1,376.08*)

PLUS: \$13.36 per diem accruing daily up to the date of Re-instatement
Calculated as:
\$105.36 per day (8 hrs. x \$13.17 per hr.)
Minus \$ 92.00 per day (8 hrs. @ \$11.50 per hr.)

DATED at the City of **WINNIPEG**, in Manitoba, this 12th day of June, 2007.

"Original signed by"

Blair Graham, Vice-Chairperson