

Manitoba Labour Board

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DISMISSAL NO. 1901

Case No. 23/09/LRA

C/R Case No. 24/09/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

R.M.,

Applicant,

- and -

**THE MANITOBA GOVERNMENT AND GENERAL
EMPLOYEES' UNION,**

Respondent,

- and -

Manitoba Public Insurance Corporation,

Employer.

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

WHEREAS:

1. On February 2, 2009, the Applicant filed an application (the "Application") with the Manitoba Labour Board (the "Board") seeking certain remedies for alleged unfair labour practices by the Respondent, contrary to Sections 20(a) and (b) of *The Labour Relations Act* (the "*Act*"). The Applicant alleges that the violations occurred between February, 2006 and July, 2007 during which period the Applicant alleges that the Respondent, *inter alia*, ignored its duty to represent the Applicant following his filing of a complaint against Manitoba Public Insurance ("MPI") for harassment, discrimination and unfair labour practices; chose not to take action against MPI under the collective agreement when requested to do so; chose not to act in the Applicant's best interest regarding workplace accommodation issues; acted in an arbitrary manner when it informed the Applicant that it could conclude/settle the Grievance with or without the Applicant's consent; and acted in an improper manner "...when it provided the Applicant with no option but to choose to resign or return to a hostile work environment...". As to remedial relief, the Applicant requests that the Board order "...any just compensation that in the Board's assessment is provided under article 34 (1)(d) and 150(1) of *The Labour Relations Act*".

2. On February 6, 2009, the Applicant filed additional documentation with the Board.
3. On February 12, 2009 following an extension of time, the Respondent, through counsel, filed its Reply disputing the Application and requesting that the Application be dismissed without a hearing. The primary basis for the Respondent's position is that the Application is untimely on account of undue delay, pursuant to Section 30(2) of the *Act*. Further, the Respondent asserts that, at the Applicant's own request, the Respondent negotiated a settlement on behalf of the Applicant in order to resolve a Grievance which the Respondent had filed on behalf of the Applicant on March 2, 2007 regarding alleged harassment and other employment concerns in the workplace. The Respondent further asserts that the Applicant did not want to return to work at MPI and instructed the Respondent to negotiate the settlement, the terms of which were incorporated in the Settlement Agreement executed by all parties, including the Applicant, on July 5, 2007. The Settlement Agreement and accompanying Release, also executed by the Applicant, on July 5, 2007, were attached to the Respondent's Reply as Exhibit "A".
4. On February 19, 2007, the Applicant filed further documentation with the Board seeking the assistance of the Board to compel MPI and the Respondent to disclose documents that had been denied to him by the other parties under the *Freedom of Information and Protection of Privacy Act* ("FIPPA").
5. On February 26, 2007, the Applicant filed with the Board a letter he had sent to the Law Society of Manitoba.
6. On February 27, 2007, following an extension of time, MPI, through counsel, filed its Reply requesting that the Application be dismissed without a hearing on a number of grounds, including:
 - The Applicant has unduly delayed the filing of the Application contrary to Section 30(2) of the *Act*.
 - The Respondent negotiated, on the Applicant's behalf, the Settlement Agreement, the terms of which resolved all outstanding employment concerns; and
 - The Application does not disclose a *prima facie* under Section 20 of the *Act*.
7. Based on a review of the Application, the Reply and the documentation attached thereto, the Board has determined, to its satisfaction, the following:
 - a. An oral hearing is not necessary as the matters at issue can be determined by a review of the written material filed by the parties.
 - b. The Applicant has unduly delayed the filing of the Application because the core events upon which the Applicant relies on the face of the Application itself are

- alleged to have occurred between February, 2006 and July, 2007, a period which is eighteen to thirty-six months prior to the filing of the Application. The Board relies on the principle expressed in a number of its decisions that an unexplained delay beyond a period of six to nine months following the event(s) complained of constitutes an unreasonable/undue delay within the meaning of Section 30(2) of the *Act* (see the summary of these decisions in *James Kepron and Brandon University Faculty Association – and – Brandon University* (2004) M. L. B. Case No. 468/03/LRA, at pp. 36-40).
- c. Notwithstanding the finding in (b), the Board accepts that on or about July 5, 2007, the Applicant, the MGEU and MPI entered into the final and binding Settlement Agreement, for valuable consideration, and as a resolution to the Grievance which the Applicant had filed on March 2, 2007.
 - d. Under the terms of the Settlement Agreement, the Applicant resigned from MPI on July 7, 2007; the Applicant received a substantial severance allowance and other monetary benefits; and he executed a general release of all claims in favour of MPI in exchange for the severance payment which he was paid under the Settlement Agreement.
 - e. The Release executed by the Applicant on July 5, 2007, applied to all matters relating to the Applicant's employment with MPI up to July 5, 2007 and the Board notes that, in the Release, the Applicant warrants that he had been given ample opportunity to obtain and, in fact, did obtain advice from the Respondent regarding the Settlement Agreement and the Release itself and, further, he warranted that the Release was executed voluntarily "...without any influence or fraud or coercion or misrepresentation".

Based on the forgoing, the Board has determined the Application has no merit within the meaning of Section 140(8) of the *Act* and that the Applicant had unduly delayed filing the Application within the meaning of Section 30(2) of the *Act*. Accordingly, the Board declines to take any further action on the Application pursuant to Section 30(3) of the *Act*. In the result, the Application is to be dismissed.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by R.M. on February 2, 2009.

DATED at **WINNIPEG**, Manitoba, this 1st day of April 2009 and signed on behalf of the Manitoba Labour Board by

“Original signed by”

W. D. Hamilton, Chairperson

WDH/mr/rb-s