

Manitoba Labour Board

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DISMISSAL NO. 1958

Case No. 93/10/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

C.P.,

Applicant,

- and -

VICTORIA INN / HOTEL & CONVENTION CENTRE

S.P,

Respondent,

- and -

UNITE HERE-Manitoba Joint Council,

Bargaining Agent/Interested Party.

BEFORE: W. D. Hamilton, Chairperson

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

SUBSTANTIVE ORDER

WHEREAS:

1. On April 9, 2010, the Applicant filed an Application (the "Application") with the Manitoba Labour Board (the "Board") for an alleged unfair labour practice committed by the Respondents on or about February 23, 2010, contrary to Section 7(d) of *The Labour Relations Act* (the "*Act*"). As to remedial relief, the Applicant requests that the Board apply Section 31(4)(j) of the *Act*, under which Section the Board is empowered to grant two or more of the remedies set out in the preceding subsections of 31(4) of the *Act*. No particular form of remedial relief is requested by the Applicant.

2. On April 3, 2010, following an extension of time, the Respondent(s) filed a Reply disputing the contentions of the Applicant and asserting, *inter alia*, that the Application be dismissed summarily for failure to disclose a *prima facie* case.
3. The Bargaining Agent, having been served with Notice of the Application by the Board, did not file a Reply.
4. Based on a review of the Application and the Reply of the Respondents, the Board has determined, to its satisfaction, the following:
 - a) An oral hearing is not necessary as the matter at issue can be determined by a review of the written material filed by the parties;
 - b) The Applicant specifically alleges that he was discharged from employment, refused employment or discriminated in regard to his employment on the basis that he "...has made a complaint or filed an application under this or any other Act of the Legislature or of Parliament."
 - c) Based on the Application, as pleaded, the Board is satisfied that there are no facts contained in the Application which, even if proven and not rebutted or contradicted, would support a conclusion that the Respondent(s) breached Section 7(d) of the *Act*. There are no facts pleaded that the Applicant has exercised a statutory right by filing a complaint or an application under the *Act* or any other act of the Manitoba Legislature or of Parliament, and which could be said, even by inference, to be an underlying reason or motive for his discharge. The Board notes that the Application itself does not constitute a "complaint or ... an application" within the meaning of Section 7(d) of the *Act*. Accordingly, the Applicant has failed to establish a *prima facie* case.
 - d) In making the foregoing determination, the Board assessed whether a *prima facie* case existed in respect of the particular statutory provision relied on by the Applicant and, when making this assessment, there must be more than a mere allegation or assertion. Rather, there must be a sufficient factual foundation evident in the Application itself in order to enable the Board to draw reasonable conclusions therefrom which, at a minimum, would call for an answer from the Respondent. In this regard, Section 7(d) of the *Act* is focused in its intent and it is not a "catch-all" to remedy dismissals from employment in the general sense. There are no facts pleaded in the Application to establish a *prima facie* claim that the decision to dismiss the Applicant during the probationary period under the terms of the collective agreement between the Respondent Employer and the Bargaining Agent was linked to or tainted by or in any way influenced by any application or complaint filed by the Applicant, under a statutory provision, as contemplated by Section 7(d). The fact that an

employee feels that a dismissal is unfair, that management behaved improperly or falsely accused the employee, or that a dismissal was simply unjust does not fall within the remedial jurisdiction of the Board under Section 7 of the *Act*. The *Act* does not protect workers from all negative employment consequences (eg. dismissal). In this regard, the Board does not function as a surrogate arbitration board in respect of all employment disputes.

5. Based on the foregoing determination that the Applicant has failed to establish a *prima facie* case under Section 7(d) of the *Act*, it follows that the Application will be dismissed.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by C.P. on April 9, 2010.

DATED at **WINNIPEG, Manitoba** this 15th day of June, 2010, and signed on behalf of the Manitoba Labour Board by

“Original signed by”

W. D. Hamilton, Chairperson

WDH/ar/rb-s