

Manitoba Labour Board

Suite 500, 5th Floor - 175 Hargrave Street Winnipeg, Manitoba, Canada R3C 3R8
T 204 945-2089 F 204 945-1296
www.manitoba.ca/labour/labbrd

DISMISSAL NO. 2205

Case No. 291/15/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

C.M.,

Applicant,

- and -

**Ironworkers, Local 728,
Bob Kozubski,**

Bargaining Agent/Respondent,

- and -

EULER,

Employer.

BEFORE: C.S. Robinson, Chairperson

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

SUBSTANTIVE ORDER

WHEREAS:

1. On December 18, 2015 the Applicant, through counsel, filed an application seeking remedy for Alleged Unfair Labour Practice (the “Application”) contrary to Section 20 of *The Labour Relations Act* (the “Act”).
2. On January 11, 2016, following an extension of time, the Bargaining Agent/Respondent, through counsel, filed its Reply, stating that the Application should be dismissed without a hearing because:

- a. all of the allegations raised were the subject of a general Release agreed to on behalf of the Applicant as part of a settlement agreement in Case No. 321/14/LRA: and, in the alternative,
- b. the Application is untimely.

Notwithstanding its position that the Application should be dismissed as a preliminary matter, the Reply further denied the allegations raised.

3. On January 20, 2016, counsel for the Applicant filed a Response to the Reply pursuant to section 22(5) of *The Manitoba Labour Board Rules of Procedure* (the “Rules”).
4. On January 21, 2016, counsel for the Bargaining Agent/Respondent filed correspondence taking the position that the Applicant’s Response to the Reply was not supported by a Form A as required by the *Rules* and should be disregarded unless one was filed forthwith.
5. The Board, following consideration of all material filed, has **DETERMINED** the following:
 - a. An oral hearing is not necessary as this matter can be determined by a review of the written material filed by the parties;
 - b. The Applicant admits that he was aware of the underlying facts related to his complaint by at least February of 2014;
 - c. The Applicant did not file his Application with the Board until December 18, 2015;
 - d. Subsection 30(2) of the *Act* provides that the Board may refuse to accept a complaint where its filing has been unduly delayed;
 - e. In *Kepron v. Brandon University Faculty Association* (2004), 103 C.L.R.B.R. (2d) 102, the Board comprehensively reviewed Section 30(2) of the *Act* and a number of the Board’s decisions relating thereto. The Board concluded that “undue delay” means delays of as little as six months in duration;
 - f. The principles enunciated in *Kepron, supra* have been consistently applied by the Board;
 - g. In the present case, the Board is satisfied that the Application was filed long after the Applicant knew all of the facts and circumstances set out therein in support of his complaint. The delay in filing the complaint is nearly two years since he was aware of the underlying facts upon which he now relies in support of his Application;

- h. The Board has determined that the Applicant has not provided a reasonable explanation for his delay in filing the Application;
- i. Having regard to the foregoing, it is not necessary to consider the Respondent's position that the Application be dismissed without a hearing on the basis that all of the allegations raised were the subject of a general Release agreed to on behalf of the Applicant as part of a settlement agreement in Case No. 321/14/LRA;
- j. Accordingly, pursuant to section 30(2) of the *Act*, the Application is dismissed.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by C.M. on December 18, 2015.

DATED at **WINNIPEG, Manitoba** this 4th day of February, 2016, and signed on behalf of the Manitoba Labour Board by

“Original signed by”

C. S. Robinson, Chairperson

RM:tj:lo-s