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DISMISSAL NO. 2268

Case No. 68/18/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

G.R.,

(the “Applicant”),

- and -

UNIFOR, Local 144,

(the “Respondent”),

- and -

MANITOBA LIQUOR & LOTTERIES CORPORATION,

(the “Employer”).

BEFORE: K. Pelletier, Vice-Chairperson

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

SUBSTANTIVE ORDER

I. Introduction:

1. On March 19, 2018, the Applicant filed an application (the “Application”) with the Manitoba Labour Board (the “Board”) seeking remedy for an Alleged Unfair Labour Practice contrary to section 20 of *The Labour Relations Act* (the “Act”).
2. On March 27, 2018, the Respondent filed its Reply, indicating that Article 30:07(b) of the Collective Agreement (the “CA”) was not applicable; asserting that the Application was without merit and should be dismissed without a hearing.

3. On March 28, 2018, the Employer filed its Reply, affirming that Article 30:07(b) of the CA references what occurs when a part-time employee is called in to work unscheduled hours. In this case, the Employer says that the Applicant was not called into work in the circumstances referenced in the Application.
4. By letter dated April 25, 2018, the Board wrote to the parties seeking their respective positions on the issue of jurisdiction of the Board to address the issues raised in the Application.
5. The Employer and the Respondent both took the position that the Board did not have the necessary jurisdiction to address internal union matters, where the CA does not apply. The Applicant took the position that the Board could hear the matter in question, citing that Unions are “obligated to treat people fairly and equally”.
6. The Respondent also argued that the Application should be dismissed for failing to disclose a *prima facie* case.
7. For the reasons set out below, the Board has concluded that the matter should be dismissed for lack of jurisdiction under section 20 of the *Act*.

II. Background:

8. For context, some of the salient and uncontested facts relied upon in the context of the within Application have been reproduced below.
 - a) The Applicant is a member of the bargaining committee for the Respondent;
 - b) A Labour Management Committee Meeting (“LMCM”) was held on December 12, 2017, at the McPhillips Street Station Casino;
 - c) The LMCM was held on a day that the Applicant was not otherwise scheduled to be at work;
 - d) LMCMs are not mandatory, but any employee in attendance, who is otherwise scheduled to work and who is on shift at the time of the meeting, will be paid for their attendance by the Employer. Employees who are not on shift and who are not otherwise scheduled to work may attend the LMCM, but they will not be compensated by the Employer;
 - e) The Respondent says that it is not obligated to pay wages to committee members who attend the LMCMs;

- f) The Applicant claims that he was asked to attend the LMCM by representatives for the Respondent. The Applicant does not claim that the Employer required him to attend;
- g) The Applicant also claims that the Respondent was treated differently than other bargaining committee members and that it acted in a manner that was arbitrary, discriminatory or in bad faith when it scheduled bargaining committee meetings on days that he was not otherwise scheduled to work.

III. Positions of the Parties:

The Applicant

- 9. The Applicant says that he should be paid a minimum of three hours for his attendance at the LMCM on December 12, 2017, as he attended on a day that he was not on shift, and not otherwise scheduled to work. The Applicant says that there was a representation from the Respondent that he would be paid for his time at the LMCM. He provided a handwritten note from M.T., which indicates: "I spoke to (E.) and he said you will be paid for the meeting on Dec 12th @ MSC. It will be the same for Dec 9 & 15th in which he will owe you time for that day, so a day off in lieu. If you have any questions please ask (E.) as he makes the arrangements for time."
- 10. The Applicant relies on Article 30:07(b) of the CA, which provides:

"Where a part-time employee is called in to work unscheduled hours, and the employee is not entitled to overtime in accordance with Article 30:02 (b), he/she shall be paid for all hours worked or for three (3) hours at his/her regular rate, whichever is greater."
- 11. The Applicant also raised concerns that the Respondent scheduled bargaining update meetings on days that the Applicant is not otherwise scheduled to work.

The Respondent

- 12. The Respondent says that it is not obligated to pay members when they attend LMCMS on their days off. It says that any reimbursement for lost time is the business of the Respondent and conducted in accordance with the Local Union bylaws. The Respondent says that Article 30:07(b) of the CA does not apply in these circumstances.

13. On the issue of the representations from M.T., the Respondent says that she does not have any authority over the finances of the union and that the Applicant was directed to contact a representative from the Respondent, which he failed to do.
14. The Respondent says that it is prepared to pay the Applicant for the one hour that he attended the meeting held on December 12, 2017.
15. The Respondent submits that the Board does not have jurisdiction under section 20 of the *Act* to address internal union matters. The Respondent further submits that the Applicant has failed to plead facts that disclose a *prima facie* case that the union acted in an arbitrary, discriminatory and/or bad faith manner and has therefore violated the duty of fair representation in the *Act*. The Respondent requests that the Application be dismissed without a hearing.

The Employer

16. The Employer says that the Applicant was not called into work in the circumstances referenced in the Application.
17. The Employer also submits that, because the issue in question does not arise out of the CA, the Board does not have jurisdiction under section 20 of the *Act* to address internal union matters as between the Respondent and the Applicant.

IV. Analysis:

18. The following statutory provisions are relevant to the disposition of this matter:

Duty of fair representation

20 Every bargaining agent which is a party to a collective agreement, and every person acting on behalf of the bargaining agent, which or who, in representing the rights of any employee under the collective agreement,

- (a) in the case of the dismissal of the employee,
 - (i) acts in a manner which is arbitrary, discriminatory or in bad faith, or
 - (ii) fails to take reasonable care to represent the interests of the employee; or
- (b) in any other case, acts in a manner which is arbitrary, discriminatory or in bad faith;

commits an unfair labour practice.

Disposition of complaint

30(3) Where the board accepts a complaint filed under subsection (1), the board may

- (a) refer the complaint to a representative of the board for purposes of subsection (4); or
- (b) proceed directly to hold a hearing into the alleged unfair labour practice; or
- (c) at any time decline to take further action on the complaint.

Matters without merit

140(8) Where, in the opinion of the board, a request, application or complaint is without merit or beyond the jurisdiction of the board, it may dismiss the request, application or complaint at any time.

Jurisdictional Issue

19. As noted above, subsection 20(b) of the *Act* provides that a union must not act in a manner which was arbitrary, discriminatory or in bad faith in representing his rights under the CA.
20. The conduct disputed in this Application concerns internal union matters relating to payment for attendance at meetings and to the scheduling of union meetings. The Board agrees with the submissions of both the Respondent and the Employer that these are not matters which arise out of the CA. In any event, the Applicant does not impute any responsibility for payment of any wages on the Employer, but says that the Respondent should be responsible to pay in accordance with Article 30:07(b) of the CA.
21. It is important to note that the Board has no more powers than those conferred upon it by legislation. Internal union matters do not fall under the Board's scope of review and they are not reviewable matters under section 20 of the *Act* because this section only addresses the standards of care which bargaining agents must follow when "representing the rights of any employee under the collective agreement".
22. As George Adams, the former Chairperson of the Ontario Labour Relations Board (now Mr. Justice Adams) stated in his text, *Canadian Labour Law* (1985) Canada Law Book, at page 721:

"Labour relations boards have made it clear that the statutory duty of fair representation does not apply to regulate the internal workings of trade

unions. The duty applies only to a trade union in the representation of its members in terms of their relations vis-à-vis their employer.”

23. In the case at hand, the matters raised by the Applicant are clearly internal union matters which fall outside the scope of the Respondent’s statutory duty of fair representation. Therefore, the Board has determined that it does not have jurisdiction to address the Application.

Prima Facie Case

24. As the Board has determined that it does not have jurisdiction to deal with this matter, it will not address the Respondent’s second objection, relating to the Applicant’s failure to establish a *prima facie* case.
25. For the reasons set out above, the Board declines to take any further action on the matter pursuant to section 30(3)(c) 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 G.R. on March 19, 2018.

DATED at WINNIPEG, Manitoba this 16th day of May, 2018, and signed on behalf of the Manitoba Labour Board by

“Original signed by”

K. Pelletier, Vice-Chairperson

KP/bjg/acr/lo-s