



Manitoba Labour Board

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DISMISSAL NO. 2298

Case No. 253/18/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

K.V.,

Applicant,

- and -

**Manitoba Government and General Employees' Union,
Bargaining Agent/Respondent,**

- and -

**MANITOBA PUBLIC INSURANCE CORPORATION,
Employer.**

BEFORE: C.S. Robinson, Chairperson

<p>This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.</p>
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SUBSTANTIVE ORDER

1. On December 11, 2018, the Applicant filed an application with the Manitoba Labour Board (the "Board") seeking Remedy for Alleged Unfair Labour Practice contrary to section 20 of *The Labour Relations Act* (the "Act").
2. On January 7, 2019, following and extension of time, the Respondent, through counsel, filed its Reply in which it submitted that the Application should be dismissed without the necessity of a hearing as the Applicant unduly delayed in filing his complaint. The Respondent further denied committing any unfair labour practice.

3. On January 14, 2019, the Applicant filed a Response to the Respondent's Reply.
4. The Employer did not file a Reply.
5. The Applicant contends that the Respondent failed to comply with its obligations under section 20 of the *Act*. He claims, in part, that a person or persons acting on behalf of the Respondent did not have his "best interests at heart" and failed to properly consider an alleged violation of his rights under human rights legislation.
6. The Board is satisfied that an oral hearing is not necessary as the case can be determined by a review of the written material filed by the parties.
7. The *Act* provides that the Board has the discretion to refuse an application if an individual has unduly delayed in filing the complaint. Subsection 30(2) of the *Act* states:

Undue delay

30(2) The board may refuse to accept a complaint filed under subsection (1) where, in the opinion of the board, the complainant unduly delayed in filing the complaint after the occurrence, or the last occurrence, of the alleged unfair labour practice.

8. Undue delay has been interpreted by the Board to mean periods of as little as six months in duration.
9. The Applicant was terminated on November 25, 2014. The Respondent filed a grievance contesting the termination on November 27, 2014. The grievance was processed through the grievance procedure set out in the collective agreement entered into between the Respondent and the Employer. The Respondent ultimately referred the grievance to arbitration and a hearing was scheduled.
10. Prior to the commencement of the hearing, the Respondent assessed the merits of the grievance and entered into settlement discussions with the Employer. The Employer made an offer to settle. Counsel for the Respondent met with the Applicant and advised him that, in their view, the settlement proposal was a reasonable settlement under the circumstances. Notwithstanding that advice, the Applicant rejected the proposed offer to settle. The Applicant further indicated that he wished to proceed before the Manitoba Human Rights Commission and that he did not want to proceed with the arbitration hearing. On or about April 12, 2016, the Applicant confirmed his instructions in this regard to the Respondent in writing. Counsel for the Respondent advised the Applicant that he would cancel the arbitration hearing and withdraw the grievance. On April 14, 2016, the Applicant responded, in writing, thanking the Respondent.

11. The Applicant states that on April 13, 2018 he received a written report from the Human Rights Commission which indicated that it would not proceed with his case. He contested that decision but was advised, on or about July 25, 2018, that the decision to dismiss his case was being upheld.
12. As noted above, this Application was filed on December 11, 2018. As a result, the period between the date the Applicant filed the Application and when he expressly advised the Respondent not to take further action on his behalf with respect to his grievance was approximately 32 months.
13. The Board agrees with the position of the Respondent that the Applicant unduly delayed in filing his complaint after the occurrence, or the last occurrence, of the alleged unfair labour practice. Accordingly, the Application is dismissed pursuant to subsection 30(2) of the *Act*.
14. In addition, having regard to the material filed and the legal principles established by the Board regarding alleged breaches of section 20 of the *Act*, the Board has determined that the Applicant has failed to establish a *prima facie* case that the Respondent violated section 20 of the *Act*.
15. As a result, the Board is satisfied that the Application is untimely and without merit. Accordingly, the Application is dismissed pursuant to subsection 140(8), clause 30(3)(c), and subsection 30(2) of the *Act*.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by K.V. on December 11, 2018.

DATED at WINNIPEG, Manitoba this 31st day of January, 2019, and signed on behalf of the Manitoba Labour Board by

“Original signed by”

C.S. Robinson, Chairperson