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DISMISSAL NO. 2363
Case No. 62/20/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

M.R.,

Applicant,

- and -

Manitoba Government and General Employees' Union,

Bargaining Agent/Respondent,

- and -

VITAL STATISTICS,

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 18, 2020, the Applicant filed an Application with the Manitoba Labour Board (the "Board") seeking a remedy for an alleged unfair labour practice contrary to section 20 of *The Labour Relations Act* (the "Act"). The Applicant filed additional documentation on March 25 and 26, 2020. The Applicant is seeking an Order by the Board referring her grievance to arbitration.
2. The Bargaining Agent filed its Reply to the Application on April 16, 2020, submitting as a preliminary issue that the Application should be dismissed without a hearing in light of the Applicant's delay of twenty-one months in filing the Application. Additionally, the Bargaining Agent submitted that the Application should be dismissed for failing to disclose a *prima facie* violation of the *Act*.

3. The Employer did not file a Reply.
4. On April 28, 2020, the Applicant filed a Response to the Reply.
5. For the following reasons, the Board has determined that the Application is untimely and should be dismissed as a result.

II. Background

6. In light of the Board's finding that the preliminary issue of timeliness is determinative of the Application, the Board has only set out salient facts that are material to that issue, as set out in the documentation filed by the parties.
7. Since in or about November, 1990, the Applicant has been employed with the Employer in various capacities. At all material times, the Applicant was a bargaining unit member, and covered by a collective agreement between the Employer and the Bargaining Agent.
8. The Applicant describes in her Application that in or about late 2012, she was unduly pressured into tendering a notice of retirement, effective March 31, 2018. The Applicant advises that her notice was illegitimate, as it was recorded on a yellow post-it note. The Applicant alleges that, while the post-it contains her signature, it was not her printing on the note, which identified her retirement date as being March 31, 2018. In her Application, she further alleges that her supervisor did not have a form at the ready when she "strongly suggested" that the Applicant tender a notice with a firm retirement date.
9. The Applicant indicates that she was advised several days later by her supervisor that she would be entitled to carry-over vacation credits, pursuant to the terms of the collective agreement, once her retirement was confirmed. The Applicant was then presented with a retirement request form. While the Applicant acknowledges signing the form, she advises that she felt "extremely pressured" and "bullied" in so doing.
10. On November 13, 2012, the Applicant signed and submitted a Vacation Carry-Over Request Form, in which she identified that it was her intention to carry-over a number of vacation days for the purposes of retirement. In this form, she confirms that she has a retirement notice on file, effective March 31, 2018. The Board notes that she signed a similar form on March 13, 2014 and February 17, 2016, identifying that it was still her intention to retire on the stipulated date.
11. The Applicant submitted a medical form in support, dated May 27, 2013, which identified that the Applicant had concerns caused by a specific supervisor in or about the period of time that she initially tendered her notice of retirement. This medical note also indicates that she had been working under the direction of a new supervisor since in or about May 10, 2013.

12. On February 5, 2014, the Applicant wrote to her supervisor, requesting the withdrawal of her retirement letter, and that it be replaced with a retirement date of March 31, 2021. She identifies in her email that she is seeking this change on the basis that the retirement procedure was not explained to her. Her request was denied by the employer on February 12, 2014, as it was deemed her responsibility to understand the policy and to read the form which she signed.
13. On February 2, 2015, the Applicant again wrote to her Employer, seeking to withdraw her retirement notice, which she indicates she submitted on her Vacation Carry-Over Request Form in early 2013. She advises in her letter that she cannot afford to retire, and that she made an uninformed decision at the time, in the presence of two management representatives.
14. On December 8, 2016, the Manager for Human Resources once again denied the Applicant's request, on the basis that the collective agreement requires "approval from the employing authority" to rescind a letter of retirement. As the employing authority did not accept the withdrawal, the Manager states that the notice with a retirement date of March 2018 remains in effect. The Applicant advises that she did not receive a copy of this letter until April 2018. The Applicant alleges that if she had received this letter in 2016, she would have contacted the Manager to discuss further.
15. On October 4, 2017, the Applicant sent a third letter to the Employer, seeking to rescind her retirement notice. In this letter, the Applicant cites that she was intimidated at the time that she submitted her letter of retirement, and accordingly requested that it be withdrawn.
16. The Applicant subsequently approached her Bargaining Agent, seeking to file a grievance.
17. On January 2, 2018, the Bargaining Agent filed a grievance on behalf of the Applicant, alleging the Employer failed to reasonably allow her to withdraw her notice of retirement. The grievance was processed through the various steps as they are outlined in the collective agreement. The Employer denied the grievance at all levels.
18. On May 22, 2018, the grievance was brought to the attention of the Bargaining Agent's Internal Screening Committee. On June 1, 2018, the Applicant was informed by counsel for the Bargaining Agent that her grievance would not be referred to arbitration. The reasons for this decision are outlined in a letter of the same date. In this letter, the Applicant was provided an opportunity to appeal the Internal Screening Committee's decision to the Bargaining Agent's Internal Grievance and Appeals Committee. The Applicant elected to appeal the decision and presented to the Appeals Committee on June 22, 2018. On June 27, 2018, the Appeals Committee informed the Applicant that it was confirming the Internal Screening Committee's decision, that her grievance would not be referred to arbitration.

19. At varying times throughout 2019, the Applicant wrote to a number of government departments and representatives outlining her concerns. In these letters, she advises that she has encountered difficulties in having her concerns addressed through various channels, including with her Bargaining Agent.
20. The Applicant indicates that, it is her “sense” that the union did not “exhaust all avenues regarding my original complaint pertaining to the fact that I was bullied and coerced (*sic*) into signing a vacation carry over form pertaining to retirement years earlier than I had intended to retire.” She alleges that, as a result, she is without employment and financially impacted.
21. The Bargaining Agent submits that the Application is untimely and should be dismissed as a result. The Bargaining Agent further denies that it has violated section 20 of the *Act*. In support, the Bargaining Agent relies on section 30(3) of the *Act* and Rule 5(5) of the *Manitoba Labour Board Rules of Procedure* (the “*Rules*”), and seeks for the Board to dismiss the Application without a hearing.
22. The Applicant was provided an opportunity to respond to the issues raised by the Bargaining Agent, including the preliminary issue of timeliness, but elected not to.

III. Legislation, Principles and Analysis

23. There are two preliminary matters which have been raised by the Respondent, namely: (a) the timeliness of the Application; and (b) the Applicant’s failure to establish a *prima facie* case. The relevant provisions of the *Act* relating to the disposition of this case are the following:

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 employee; or
- (b) in any other case, acts in a manner which is arbitrary, discriminatory or in bad faith;

commits an unfair labour practice.

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.

24. Rule 5(5) of the *Rules* states:

Disposition without hearing

5(5) Subject to the *Act* and the regulations, in any proceeding before the board relating to an application, complaint, request or referral, the board may dispose of the application, complaint, request or referral without the holding of a hearing.

25. The Board is of the view that an oral hearing is not necessary for the disposition of this matter. Rather, the Application can be determined by a review of the written material filed by the parties.

26. The Board has affirmed many times that it will not entertain applications filed beyond six months of the date of the occurrence, or the last occurrence, unless there are strong and compelling reasons for the Board to depart from its practice. The issue of timeliness is a threshold issue in this case that must be considered independently prior to consideration of the merits of the Application.

27. The Board has long held that there is good reason to ensure applications are filed in a timely manner. In a labour relations context, it is understood that time is of the essence. This principle has been recognized in the field of labour relations, not only to ensure the timely commencement and resolution of outstanding grievances, but also to bring finality to parties, who can expect that claims which reasonably appear to have been resolved, or claims that have not been advanced within a reasonable period of time, will not later re-emerge. In *Domtar Inc. v. Scheurfeld*, [1995] M.L.B.D. No. 4 (Man. L.B.) (*Quicklaw*), the Board stated:

The Legislature has used the term “undue delay”. We are of the view that the lengthy period taken by the Applicant to file his application is an extreme example of such delay. One of the primary functions of any adjudicative body, especially in matters of labour relations, is to deal with matters in a prompt and expeditious fashion. It is not really necessary for this Board to recite the detrimental effects that can occur because of delay. Memories fade; witnesses may not be available; documentary material may be lost; and of equal importance is the fact that, if no proceedings have been taken in any reasonable period of time, the parties may well assume that the matter has been finalized or, at least, will not be proceeded with. It must also be noted, in this case, that the Applicant was attempting to establish some form of claim during this period. He attended at the Employment Standards branch; he obviously communicated with the union; he communicated with the Employer; and we are not sure if he communicated with anyone else. Perhaps he did not obtain the proper advice, or perhaps he did not seek advice from well-informed individuals. It is perhaps trite to

state that ignorance of the law is no excuse, especially after such a lengthy period.

28. The Board is satisfied that the Applicant has not satisfied the requirements of the *Act* in terms of timeliness, as the Application was filed long after the six months of the Bargaining Agent's alleged violation, namely its decision not to advance the grievance to arbitration. The Board is of the view that the Applicant had all of the necessary information to make the complaint, at the latest, by June 27, 2018, and the Applicant has neither provided any reason in her Application for her failure to act in a timely manner, nor provided strong or compelling reasons for the Board to depart from its practice.
29. In any event, even if there had been compelling reason to extend the timelines for filing, the Board is not satisfied in the circumstances that the Applicant has established a *prima facie* case. Notably, the Applicant has failed to outline any basis for the Bargaining Agent's alleged shortcomings in representing her, beyond generally stating that the Bargaining Agent "did not exhaust all avenues regarding [her] original complaint" that she was "bullied and coerced (*sic*) into signing a vacation carry over form". An employee is not entitled as an absolute right to have his or her grievance taken to arbitration, or even to have a grievance filed on his or her behalf in the first place. Further, as has been commented upon at length by this Board, a section 20 application does not provide an employee with a general avenue of appeal of a union's decision. The Board does not intervene unless it can be demonstrated that the union has acted in an arbitrary or discriminatory manner or in bad faith with regard to rights under the collective agreement. To establish a section 20 complaint, an applicant is required to set out in detail how they believe their bargaining agent failed in their duty to represent them. In the present case, the Application does not contain the necessary information required to establish a *prima facie* violation of section 20 of the *Act*.
30. For these reasons, the Application is dismissed.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by M.R. on March 18, 2020.

DATED at **WINNIPEG, Manitoba** this 19th day of May, 2020, and signed on behalf of the Manitoba Labour Board by

"Original Signed By"

K. Pelletier, Vice-Chairperson