Date: 20110914
Docket: CI 07-01-52046
(Winnipeg Centre)
Indexed as: Korsch v. The Manitoba Human Rights Commission
Cited as: 2011 MBQB 222

COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:	)	COUNSEL:
MARTIN KORSCH,	)	David P. Negus and Melissa N. Burkett,
Applicant,	)	for the Applicant
- and -	)	
THE MANITOBA HUMAN RIGHTS COMMISSION,	)	Isha Khan, for the Respondent
Respondent,	)	
- and -	)	Mark Newman, for the Intervenor
PRITCHARD ENGINEERING COMPANY LIMITED,	)	
Intervenor	)	Judgment delivered: September 14, 2011

SIMONSEN J.

[1] The applicant seeks judicial review of a decision of the Board of Commissioners ("the Board") of the Manitoba Human Rights Commission ("the Commission"), dated April 20, 2007. In that decision, the Board determined that a settlement offer made by the applicant's former employer, Pritchard Engineering Company Limited ("Pritchard"), in response to the applicant's complaint of discrimination, was reasonable, and that the complaint proceedings would, therefore, be terminated.

[2] The applicant challenges the Board's decision on two grounds. First, he contends that the Board misinterpreted and failed to comply with s. 29(2)(b) of *The Human Rights Code*, C.C.S.M., c. H175 ("the *Code* "), and thereby exceeded its jurisdiction. Section 29(2)(b) provides that if the respondent in a human rights complaint makes a settlement offer that the Commission considers reasonable but the complainant rejects, the Commission shall terminate the complaint. The applicant says that the Board's non-compliance with s. 29(2)(b) arose when it modified Pritchard's offer and then found that modified offer to be reasonable; he takes the position that the Board must consider a respondent's offer "as is". Secondly, the applicant contends that the Board's decision was unreasonable, both in the factors considered and the result, the specifics of which will be addressed later in these reasons.

THE FACTS

[3] In 1987, the applicant commenced employment with Pritchard as a mechanic/machinist. In January 2004, he was involved in a motor vehicle accident as a result of which he sustained permanent injuries to his back and knees. Due to these injuries, he was unable to work for three months. Thereafter, he returned to his regular duties but was only able to work four hours per day; as well, he could no longer perform any heavy lifting or stooping without pain. All of the applicant's medical practitioners indicated that he was unable to return to his prior employment on a full-time basis and that he had these restrictions.

[4] This arrangement continued until December 2004 when there was a meeting attended by the applicant, representatives of Pritchard and the applicant's union, as well as Manitoba Public Insurance ("MPI") (which was paying the applicant "top-up" income replacement benefits) and a vocational rehabilitation consultant retained by MPI. The attendees have somewhat different recollections as to the alternate jobs that were offered by Pritchard at the meeting. However, even the applicant acknowledges that Pritchard offered him two alternate jobs, in sales and hydraulics, both of which he rejected due to the physical requirements. Pritchard says that, as a result of the meeting, it believed that the applicant was seeking to end his employment so that he could collect MPI benefits and be retrained. This understanding, together with concerns about the applicant's productivity, led Pritchard to terminate his employment effective January 2, 2005. With the assistance of his union, the applicant objected to the termination, and Pritchard agreed to continue his employment.

[5] Thereafter, the applicant continued to work four hours per day, with the same physical limitations. On May 30, 2005, Pritchard wrote to him indicating that there were no light duties jobs available. By letter dated June 30, 2005, Pritchard advised him that it could no longer accommodate the half-day work and that he was to report for full 8-hour days on July 4, 2005, failing which his employment would be terminated effective July 18, 2005. The applicant was

unable to return to full-time work and his employment was terminated effective July 18, 2005.

[6] The applicant did not grieve the termination of his employment, nor did he file a complaint against his union with respect to its duty of fair representation. However, on August 19, 2005, he filed a complaint with the Commission, alleging that Pritchard had failed to accommodate his disability and had terminated his employment on the basis of disability, contrary to s. 14 of the *Code*. On February 8, 2006, Pritchard filed a reply denying the allegations.

[7] In accordance with the *Code*, the Commission assigned an investigator, Simon Gillingham, to investigate the complaint and provide an assessment. Some of the key observations and conclusions made in his report dated November 9, 2006 are as follows:

Special Needs

- The applicant had special needs related to his back condition and Pritchard was aware of these needs. According to the MPI documentation, the medical consensus was that he would never be able to resume full-time hours in his pre-accident occupation; his medical restrictions limited him to working half- time shifts, with a certain amount of pain and discomfort;

Process to Assess Accommodation

- Pritchard's process to assess the issue of accommodation was inadequate because it:

  (i) made no apparent efforts to obtain medical information from the applicant;

  (ii) was unable to produce any notes or record of the December 2004 meeting and offered only two alternate positions and casual contract work at that meeting;

(iii) had no documentation to indicate that the applicant was not meeting production standards or completing his work in a timely manner; and

(iv) offered only termination or full-time work in June 2005, and did not consider unpaid medical leave;

Substantive Accommodation

- Pritchard provided accommodation to the applicant from the spring of 2004 to July 2005 by allowing him to work in his regular position four hours per day with restrictions while maintaining full-time wages and doing meaningful work. As well, after his employment was terminated, Pritchard continued to contribute to his group benefits for ten months [although the applicant disputes this]. Mr. Gillingham further stated that, taken as a whole, the substantive accommodation offered by Pritchard was "not insignificant";

- Pritchard did not provide evidence that the applicant was not meeting production standards;

- Pritchard did not provide evidence to suggest that accommodation was provided to the point of undue hardship; specifically, it did not provide evidence that assigning the applicant to an alternate position in one of its five divisions or releasing him to unpaid medical leave would have been an undue hardship;

- At the December 2004 meeting, Pritchard was aware that the applicant's medical restrictions would require an indefinite assignment to half-time shifts; at that meeting, Pritchard was also advised that MPI was "topping up" his wages and that it would pay full income replacement benefits if his employment with Pritchard ended;

- After the applicant's employment ended, MPI placed him in a retraining program because of his injuries; this suggested that it was reasonable to conclude that he would never have been able to perform the work he had done at Pritchard or similar work;

- It was not possible on the available evidence to determine whether Pritchard could have provided substantive accommodation. Mr. Gillingham noted that the applicant's ability to physically carry out the duties of another position, had Pritchard made further offers, "can only be conjecture";

Recommendation

- He recommended that the Board refer the complaint to mediation.

[8] On December 8, 2006, the Board, acting on Mr. Gillingham's recommendation, referred the complaint to mediation.

[9] On February 16, 2007, counsel for the applicant wrote to Jean Boyes, the Board-appointed mediator, indicating that the applicant would be prepared to settle for $80,000 on the basis that an award at this level was a "reasonable possibility" should he succeed before an adjudicator. The offer was broken down as follows:

(a)	Notice for wrongful dismissal - 18 years employment - proposed notice period 12 months' pay	$49,816.00
(b)	Injury to dignity and self-respect	$17,000.00
(c)	Exemplary damages	$10,000.00
(d)	Damages additional notice for bad faith termination	$3,832.00
(e)	Benefit costs incurred by the applicant	$1,698.34

[10] On March 23, 2007, counsel for Pritchard proposed settlement "in recognition of the failure of process" identified by Mr. Gillingham, on the following basis:

(a) Pritchard would provide an undertaking to have a representative attend an appropriate training program administered by the Commission in relation to the duty to accommodate;

(b) Pritchard would provide an undertaking to have its management instructed on the basis of the matters learned at the education process provided by the Commission;

(c) Pritchard would make a payment of $3,000.00 to the applicant;

(d) Pritchard would provide a letter of apology expressing regret in relation to the circumstances which brought the parties before the Commission; and

(e) The applicant would provide a withdrawal of the complaint and a release of any and all claims against Pritchard.

[11] Counsel for the parties then sent further correspondence to Ms Boyes (the applicant's dated March 27, 2007 and Pritchard's dated April 2, 2007) in which they reiterated the above positions on settlement, with explanations as to the rationale. Part of what informed the parties' positions on settlement was a dispute as to whether the applicant's employment had ended with the agreement of his union. Counsel for the applicant indicated that the applicant's entitlement to MPI benefits should not be taken into account in assessing the reasonableness of Pritchard's offer.

[12] By the letter dated March 27, 2007 and a further letter dated April 5, 2007, counsel for the applicant advised Ms Boyes that Pritchard's offer was not acceptable.

[13] On April 5, 2007, Ms Boyes prepared a report summarizing the offers made since the matter had been referred to mediation. She did not provide an assessment as to the reasonableness of the offers. Her report concluded by recommending that the Board determine whether a reasonable settlement proposal had been made by Pritchard in accordance with s. 29(2)(b) of the *Code* and, if not, proceed to determine in accordance with s. 29(3) whether a request should be made for the appointment of an adjudicator to conduct a hearing.

[14] On April 20, 2007, the Board decided, without providing reasons, that Pritchard's offer was reasonable if the release required from the applicant was specific to the human rights complaint, and not general in nature. At the time of this decision, the Board had before it the complaint and reply, the investigator's report, Ms Boyes' mediation report, as well as correspondence from counsel for the parties.

[15] By letters dated April 25, 2007, Janet Baldwin, Chairperson of the Board, advised counsel for both the applicant and Pritchard of the Board's decision of April 20, 2007; she indicated that Pritchard's offer was deemed reasonable on the condition that the applicant's release was limited to the human rights complaint. She also indicated that if the applicant was not prepared to accept the offer, the Commission would terminate its proceedings in respect of the complaint pursuant to s. 29(2)(b).

[16] By letter dated May 15, 2007, the applicant advised the Commission that he did not accept the Board's decision and requested that the complaint proceed.

[17] On May 30, 2007, Jackie Gruber, a mediator who had assumed conduct of the matter from Ms Boyes, wrote to both the applicant and counsel for Pritchard indicating that the Commission's proceedings on the complaint would be terminated.

[18] The notice of application now before me was filed on May 24, 2007.

ANALYSIS AND DECISION

[19] I will not deal with Pritchard's preliminary argument that the application should be dismissed for delay because I am, for the reasons that follow, dismissing the application in any event.

A. Standard of Review

[20] Counsel agree that the applicable standard of review is reasonableness, without distinguishing between the issue of interpretation of s. 29(2)(b), and the substance of the Board's decision.

[21] I agree that the standard of reasonableness applies to the Board's decision to terminate the complaint proceedings. While older authorities found that the standard applicable to a decision to accept a settlement offer and terminate a complaint proceeding is patent unreasonableness (***Losenno v. Ontario (Human Rights Commission)***, [2005] O.J. No. 4315, 78 O.R. (3d) 161, para. 18), the Supreme Court of Canada in ***Dunsmuir v. New Brunswick*** 2008 SCC 9, [2008] 1 S.C.R. 190 held that there are only two standards of review: correctness and reasonableness, thus making the standard of reasonableness applicable to decisions to terminate a human rights complaint. Consistent with this, the courts have held that the standard of reasonableness applies to a Board decision to dismiss proceedings on a complaint (***Rowel v. Union Centre Inc.***, 2009 MBQB 145, [2009] M.J. No. 215, para. 21).

[22] In ***Dunsmuir***, the Supreme Court of Canada described the standard of reasonableness as follows:

> 47. Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that made a decision reasonable, referring to both the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of [page 221] justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

B. Amending Pritchard's Offer of Settlement - s. 29(2) (b) of the *Code*

[23] As I have said, counsel for the applicant takes the position that the Board misinterpreted and failed to comply with s. 29(2)(b) of the *Code*, which provides as follows:

> Settlement of complaint.
>
> 29(2) Where the Commission does not dismiss a complaint under subsection (1), it may cause mediation to be undertaken between the complainant and respondent in an attempt to settle the complaint, and
>
> . . . . .
>
> (b) if the respondent proposes an offer of settlement that the Commission considers reasonable but the complainant rejects, the Commission shall terminate its proceedings in respect of the complaint.

[24] Specifically, counsel for the applicant argues that, when acting under s. 29(2)(b), the Board must take an offer of settlement presented by a respondent "as is" without modification, and determine whether it is reasonable. He maintains that there is no language in s. 29(2)(b) that gives the Board the power to amend offers or decide that an amended offer is reasonable.

[25] In this case, the Board modified Pritchard's offer by requiring the applicant to provide a release that was limited to the human rights complaint, rather than a general release. Although there is no evidence that Pritchard responded to Ms Baldwin's letter of April 25, 2007 to indicate that it agreed with the modified offer, counsel for Pritchard submits that the offer was in fact acceptable; further, given the tenor of Ms Baldwin's letter, I am satisfied that Pritchard's lack of response could be taken as concurrence. Indeed, there is no suggestion even by counsel for the applicant that the modified offer was not acceptable to Pritchard.

[26] Counsel for the Commission submits, and I accept, that the applicant's interpretation of s. 29(2)(b) is overly narrow and does not permit the Board to provide any constructive direction that might assist the parties in reaching a settlement. My reasons for this conclusion are as follows.

[27] It has been consistently recognized that human rights legislation is to receive a wide and liberal construction advancing the objectives underlying such laws. As stated in ***Ontario (Human Rights Commission) v. Simpson-Sears Ltd.***, [1985] S.C.J. No. 74, [1985] 2 S.C.R. 536, at para. 12:

> ... The accepted rules of construction are flexible enough to enable the Court to recognize in the construction of a human rights code the special nature and purpose of the enactment...and give to it an interpretation which will advance its broad purposes. ....

[28] Likewise, in ***Canada (House of Commons) v. Vaid***, 2005 SCC 30, [2005] 1 S.C.R. 667 (para. 80), the Supreme Court of Canada affirmed that the interpretive principles in the *Interpretation Act* R.S.C. 1985 c. I-21 that every

enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects" apply with "special force" in the application of human rights laws.

[29] The *Code* clearly establishes the Commission's role as a gate-keeper of the complaint process. Therefore, a broad and purposive approach to the interpretation of s. 29(2)(b) should allow the Commission to facilitate the resolution of complaints through mediation, to the extent possible (***Rowel***, para. 23).

[30] Subsection 29(2)(b) enables the Board to "consider" whether an offer is reasonable, thereby suggesting that the Board must do some form of assessment of the offer. It is reasonable that in assessing the offer, the Board may identify gaps, defects or omissions and provide some constructive direction or clarification to the parties as to how these gaps, defects or omissions might be remedied to render the offer reasonable. To find otherwise would significantly impede the Commission's ability to perform its gate-keeping function under the *Code*. This is particularly so where, as here, the assessment made and direction given operated only to the benefit of the applicant by ensuring that he provide a release limited to those matters within the purview of the complaint. Therefore, the Board's interpretation of s. 29(2)(b) was reasonable, as were its actions in modifying Pritchard's offer and then considering that modified offer.

[31] Even if the issue of interpretation of s. 29(2)(b) is a question of jurisdiction attracting a standard of correctness (***Losenno***, para. 8 and ***Carter***

v. Travelex Canada Ltd. 2009 BCCA 180, [2009] B.C.J. No. 828, para. 25), I am satisfied, for the above reasons, that the Board's interpretation meets this standard.

C. Reasonableness of the Board's Decision

[32] Counsel for the applicant contends that the Board's decision was unreasonable because Pritchard's settlement offer was not reasonable.

[33] The authorities provide that the reasonableness of any settlement offer considered by the Board must be assessed in the context of what the complainant could reasonably be expected to achieve before an adjudicator (***Losenno*** and ***Carter***). Therefore, I must address the likely outcome of the applicant's complaint upon adjudication, both in terms of "liability", that is, whether a finding of discrimination would have been made, and "quantum", that is, the "financial losses sustained, expenses incurred or benefits lost by reason of the contravention", damages for injury to dignity, feelings or self-respect, and exemplary damages (s. 43(2)(b), (c) and (d) of the *Code*).

[34] With respect to "liability", ss. 9(1)(d) and 9(2)(l) of the *Code* define "discrimination" as a failure to make reasonable accommodation for an individual whose special needs are based on physical disability. In order to succeed in establishing discrimination, a complainant must first demonstrate a *prima facie* case. Once the complainant has done so, the onus shifts to the respondent to disprove the *prima facie* case of discrimination or to prove, on a balance of probabilities, that the discriminatory practice has a *bona fide* occupational

requirement. To do so, the respondent must demonstrate that it was impossible to accommodate the employee without imposing undue hardship on the employer (***British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.E.U.***, [1999] S.C.J. No. 46, [1999] 3 S.C.R. 3. In ***British Columbia,*** the court also noted that, in considering the issue of accommodation, "it may often be useful to consider, separately, first the procedure, if any, which was adopted to assess the issue of accommodation and, second, the substantive content of either a more accommodating standard which was offered or alternatively the employer's reasons for not offering any such standard" (para. 66).

[35] Because no reasons were provided by the Board, I will consider all of the material that was before it, particularly the investigator's report, in order to determine whether there is a rational basis for its decision (***Lusina v. Bell Canada***, 2005 FC 134, [2005] F.C.J. No. 155, para. 32).

[36] All of the parties agree that Investigator Gillingham concluded that Pritchard's process of assessing accommodation was inadequate, and that this constitutes a contravention of the *Code*.

[37] However, the parties disagree as to what the investigator found about a substantive failure to accommodate. Counsel for the applicant says that because Mr. Gillingham found no evidence of accommodation to the point of undue hardship, there would be a finding of substantive discrimination upon adjudication. Counsel for the Commission and Pritchard, however, indicate that

a proper interpretation of the report, and certainly a reasonable one, is that there would be no finding of substantive discrimination; the investigator commented that Pritchard had arranged for the applicant to work part-time for 15 months, earning full-time wages and doing meaningful work. As well, he noted that the applicant was being retrained by MPI, which led him to conclude that the applicant could no longer perform his duties because of physical limitations. The medical evidence indicated that the applicant would never be able to return to his regular full-time duties. Alternate jobs had been rejected and Pritchard had indicated that no light duties jobs were available.

[38] In my view, a reasonable conclusion, based on the material before the Board and Mr. Gillingham's report in particular, is that, even if an adjudicator were to find a substantive failure to reasonably accommodate, damages flowing from the contravention would be consistent with the amount of Pritchard's settlement offer.

[39] Specifically, with respect to damages for injury to dignity, feelings and self-respect (s. 43(2)(c)), there was little, if any, evidence before the Board or this court as to the impact of any contravention of the *Code* on the applicant's physical or emotional health. In any event, counsel agree that awards made under this head of damage in Manitoba human rights complaints, even for substantive discrimination, have been in the range of $1000 to $4000 (***Hiebert v. Martin-Liberty Realty Ltd. o/a Amberwood Village***: http://www.manitobahumanrights.ca//publications/legal/decision_hiebert.html,

Ursel v. LMG Properties Ltd. (c.o.b. Bay Hill Inns & Suites), [2009] M.H.R.B.A.D. No. 1 and ***Budge v. Thorvaldson Care Homes Ltd.***, [2002] M.H.R.B.A.D. No. 1, at paras. 115 - 126). Therefore, Pritchard's $3000 offer reasonably compensates for these damages.

[40] I now turn to the issue of quantum of financial losses (s. 43(2)(b)). Counsel for the applicant argues that Pritchard failed to reasonably accommodate the applicant, both in its process to assess accommodation and substantive accomodation, as a result of which the applicant lost his job. Therefore, he contends that financial loss, specifically loss of wages and benefits, should be assessed, at a minimum, on the basis of damages recoverable in a wrongful dismissal action. Counsel for the Commission and Pritchard reiterate that Mr. Gillingham concluded that Pritchard had committed a process failure only, and that this kind of contravention would not lead to an award for financial loss.

[41] Section 43(2)(b) of the *Code* specifically allows for recovery of financial losses sustained "by reason of the contravention". Because damages recoverable are those caused by a contravention of the *Code*, the authorities indicate that damages for wrongful dismissal are not the proper measure of damages in a human rights complaint (***Piazza v. Airport Taxicab (Malton) Assn. (Ont.C.A.)***, [1989] O.J. No. 994, 69 O.R. (2d) 281) and ***Vanton v. British Columbia Council of Human Rights***, [1994] B.C.J. No. 497, (1994), 21 C.H.R.R. D/492 (B.C.S.C.)).

[42] Counsel for the Commission notes that there are no Manitoba human rights decisions which have dealt with a failure to accommodate that led to a loss of wages. She says that the only Manitoba case which may be of assistance in this area is ***Budge*** which dealt with harassment in the workplace. In ***Budge,*** the adjudicator found that the complainant's termination was at least partly due to her raising the issue of harassment. The complainant had worked for the respondent for 11 years, took six to seven months to find a new job and was awarded damages equivalent to 12 weeks' salary.

[43] I am not satisfied that an adjudicator would have awarded the applicant wage loss, even if it were proven that a contravention of the *Code* (either process or substantive) caused the termination of his employment - because I consider the situation similar to that in ***Eyerley v. Seaspan International Ltd.***, [2001] C.H.R.D. No. 45, [2001] 42 C.H.R.R. D/342). In that case, the respondent/employer had terminated the complainant's employment due to excessive absenteeism for medical reasons. The tribunal found discrimination on the basis of failure to accommodate, but refused to award lost wages following termination because there was no evidence that the complainant was fit to resume his job and it would have been too speculative and remote to compensate him for lost wages he would have earned had the employer accommodated him in an alternative position (para. 162).

[44] In this case, Mr. Gillingham reported that it was reasonable to conclude that the applicant would never have been able to perform his full-time job with

Pritchard. The applicant had been offered two alternate jobs, which he had rejected. Pritchard had indicated that no light duties jobs were available. The applicant presented no evidence of other alternate jobs he could have performed. In fact, Mr. Gillingham noted that the applicant's ability to carry out the duties of another position, had Pritchard made further offers, "can only be conjecture". Given all of this, it was reasonable for the Board to consider Pritchard's offer on the basis that no wage loss would have been awarded to the applicant upon adjudication of his complaint.

[45] With respect to exemplary damages (s. 43(2)(d)), I recognize that these are extraordinary and in the nature of punishment for malice or recklessness (***Dubeck v. Friesen (c.o.b. Vy-con Construction)***, [2002] M.H.R.B.A.D. No. 2). The evidence before the Board clearly did not support such a claim; to the contrary, there was evidence of significant accommodation on the part of Pritchard. Further, even in ***Dubeck***, where the arbitrator found that the respondent had exhibited a wanton disregard for the complainant's dignity and an intent to denigrate, she awarded only $750 in exemplary damages. Therefore, it was reasonable for the Board to consider Pritchard's offer on the basis that there would be no recovery for exemplary damages.

[46] Counsel for the applicant further submits that the Board's decision was unreasonable because, in assessing Pritchard's offer, it took into account that the applicant would continue to receive income replacement benefits from MPI after his employment was terminated. Counsel for the Commission acknowledges that

when the Board made its decision, it took into account that the applicant would be receiving MPI benefits. The Commission maintains that this was appropriate because all sources of income must be considered in order to determine losses flowing from a contravention.

[47] The Supreme Court of Canada, in ***Cunningham v. Wheeler***, [1994] S.C.J. No. 19, [1994] 4 W.W.R. 153, and ***Sylvester v. British Columbia***, [1997] S.C.J. No. 58, [1997] 2 S.C.R. 315 held that disability benefits paid during the period in which a claimant is entitled to damages for lost wages should not be deducted from the damage award where the benefits are fully or partially paid for by the complainant (I will assume that the applicant paid for his MPI benefits). In ***Tozer v. British Columbia (Ministry of Transportation & Highways, Motor Vehicle Branch***, 2002 BCHRT 11, (2002) 42 C.H.R.R. D/338, it was held that the principles outlined in ***Cunningham*** and ***Sylvester*** apply in the context of a human rights complaint in British Columbia.

[48] I am satisfied that I do not need to decide whether these authorities apply to a human rights proceeding in Manitoba or whether the Board could reasonably take into account the applicant's MPI benefits in assessing Pritchard's offer. I do not need to decide the issue, because, for the reasons already outlined, it was reasonable for the Board to assess Pritchard's offer on the basis that, regardless of the MPI benefits, there would have been no recovery for wage loss.

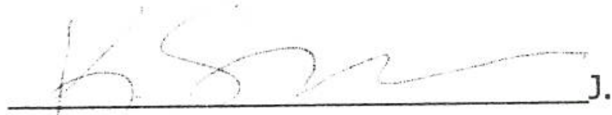
[49] Finally, counsel for the applicant maintains that the Board's decision was unreasonable because it dealt with only part of the complaint; it left the balance

to be addressed through other legal avenues, which were not in fact available. The applicant contends that the Board must have assumed that other legal avenues were available to him when it insisted that he be required to provide only a limited form of release. Other legal remedies were not available because: no civil actions are allowed for alleged breaches of the *Code* (***Seneca College of Applied Arts and Technology v. Bhadauria***, [1981], 2 S.C.R. 181); he was apparently out of time to grieve; he says that the time had expired for bringing a complaint against his union for breach of the duty of fair representation; and civil proceedings for wrongful dismissal were not available because he was a unionized employee.

[50] In my view, the Board acted appropriately in requiring a release only in respect of the human rights complaint as this was the only matter within its jurisdiction. Indeed, I would question how the Board could impose upon the applicant a settlement that involved providing a release beyond the scope of the complaint. The Board dealt with the entire complaint and assessed Pritchard's offer accordingly. There is no indication that the Board anticipated that the applicant would make a recovery in other proceedings or that any such anticipated recovery impacted upon its assessment of Pritchard's settlement offer.

[51] Therefore, I conclude that the Board's decision was reasonable and consistent with the legislative intent of the *Code*.

[52] The application is dismissed. Counsel may speak to costs if they cannot agree.



J.