

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

CHRISTOPHER WILD

(the "Complainant" or "Wild")

-and-

TEAMSTERS LOCAL UNION NO. 155

(the "Union")

-and-

TFC VANCOUVER PRODUCTIONS LTD.

(the "Employer" or "TFC")

PANEL: Bruce R. Wilkins, Vice-Chair

APPEARANCES: Christopher Wild, for himself  
Michael J. Prokosh and G. James Baugh,  
for the Union  
Barry Y. Dong, for the Employer

CASE NO.: 59711

DATE OF DECISION: February 18, 2011

**DECISION OF THE BOARD**

I. **NATURE OF THE APPLICATION**

1 Wild applies under Sections 10 and 12 of the *Labour Relations Code* (the “Code”) claiming the Union acted contrary to the Code in denying him membership.

II. **BACKGROUND FACTS**

2 In 2007, Wild worked as a transportation coordinator for the production called “Safety Glass”. Employees working on Safety Glass were asked if they wished to become members of the Union. Wild signed a Union membership card provided to him. He later received a letter dated November 4, 2008 from the Union which stated the following:

Dear Sir:

It has recently been confirmed by the British Columbia Labour Relations Board (BCLRB) that the certification vote on the production “Safety Glass” has been counted.

Teamsters Local 155 is one of three (3) unions that make up the BCCFU. Our Local has eight (8) Divisions, which consist of Drivers, Security, Caterers, Animal Handlers and Trainers, Animal Wranglers, Marine, Automotive, and the Miscellaneous Division. Local 155’s jurisdiction is comprised of the duties that each Division performs while on BCCFU represented productions.

All employees who worked on “Safety Glass” within Local 155’s jurisdiction will be offered membership with our organization. Our initial review indicates this encompassed Driver, Security and Caterers employed at the time.

Any individuals who choose to join Teamsters Union Local NO. [sic] 155 will be given membership once an original pay stub has been presented for us to view to confirm your employment on the show “Safety Glass”. Please advise the office on or before November 28, 2008 of your intentions.

It must be mentioned that our organization has long established minimum requirements for dispatch to jobs in each division. Our historical practice is that each new member must meet the requirement for their applicable division before they will be dispatched to work.

Please find enclosed the Dispatch Rule requirements for your Division.

We are looking forward to meeting with all of you and working closely over the coming years. Please feel free to call me at this office if you have other concerns or questions that I can address.

3 Wild went to the Union office in December 2008 with his pay stub from Safety Glass. When he presented his pay stub, Wild was told by an office assistant that he could become a member but he would need to upgrade his licence to a Class 3, and obtain a number of other qualifications. The Union has various membership requirements for drivers. One of the requirements for application for membership is a valid B.C. or Yukon Class 3 and 4 driver's licence with R15. The Union also requires an applicant to have completed a dangerous goods transportation certificate. Wild did not complete these requirements.

4 After December 2008, Wild worked on both non-union and Union shows. With respect to the Union shows, Wild worked on "Vampire Diaries", "Psyche" and "Marmaduke". Dues were remitted to the Union on his behalf. While he was working on Marmaduke, he was approached by the Union and asked to leave the set because of a membership issue. He complied with the Union's request.

5 The employer on Marmaduke was TFC, a film production company affiliated with Twentieth Century Fox Canada Ltd. TFC is a signatory employer to the Master Collective Agreement with the BC and Yukon Council of Film Unions of which the Union is a constituent member. Wild had no record of discipline while working on Marmaduke, and TFC believed Wild was a member in good standing of the Union while working on Marmaduke. TFC made various remittances to the Union on Wild's behalf, which were accepted by the Union. The Union filed a grievance claiming TFC had improperly hired Wild for Marmaduke contrary to the terms of the Master Collective Agreement. The grievance seeks lost wages in the amount earned by Wild.

6 In June 2009, while working on Marmaduke as a cast driver, Wild visited the Union office to pay dues and was told he was currently not a member and had not been a member since 2006. Wild was told to speak to Brad Swannie.

7 Wild had a meeting with the Union in August 2009. At a subsequent Union Executive Board meeting, the Union concluded that Wild had abandoned the process of attaining membership and eligibility for dispatch in the Union's drivers division. In a letter dated August 10, 2009, Bruce Scott of the Union informed Wild of its decision as follows:

This letter is a follow up to our meeting and discussions last week regarding Brother John O'Toole dispatching you to TCF Vancouver Productions Incorporated as a full time employee on that production.

In a scheduled meeting with the Local Union Executive Board the above matter was discussed along with the circumstances surrounding the "Safety Glass" certification. In the end the Board is in agreement that you abandoned the process of attaining

membership in the Drivers Division and that your current status with Teamsters Local 155 is as a suspended member of the Catering Division.

In the event you wish to transfer from the Catering Division to the Driving Division you will be required to pay the outstanding dues and penalties in arrears to make yourself whole and only at that time can you apply to be added as a Permittee Driver to start amassing the required days and evaluations for status in that division.

8 The Union's constitution says the following, in part, concerning membership in good standing:

(B) Good Standing:

(1) A member shall lose his good standing membership in the organization by acceptance of a withdrawal card, by suspension or expulsion from membership after the appropriate proceedings consistent with the Bylaws or Constitution, or by non-payment of dues on or before the last business day of the current month.

...

(2) A member in a suspended status because of his failure to pay his dues or other obligations as required by the International Constitution and these Bylaws, and not suspended or expelled from membership pursuant to disciplinary action, may reinstate his good standing for the purpose of attending Local Union meetings and voting at elections by the payment of all delinquent dues and other financial obligations prior to such meeting and election.

9 Prior to his signing a Union membership application card while working on Safety Glass, Wild had worked as a member of the Union in its catering division. Wild was suspended for delinquent dues in 1990, 2004 and 2006. In 2004, Wild was required to pay a \$500.00 re-initiation fee to make himself whole, in order to return to good standing with the Union. In 2006, he was suspended indefinitely by the Union because his dues were in arrears, and according to the Union, he remains suspended until the present time. Wild did not appeal the suspensions, and does not contest that he was suspended. Wild does not assert that he has taken steps to rectify his suspended status.

10 Wild was offered status in the drivers division in 1998 on the condition that he upgrade his licence and meet all the necessary requirements to transfer divisions. He did not do so because he felt he would be too low on the seniority list and would not get enough work. In 2004 and 2006, Wild did not pay dues because he felt he would not

get enough work. The Union's membership application card contains the question "Have you been a Teamster member before, if so what Local?" Wild did not complete this part of the application card when he filled it out after working on Safety Glass.

11 The Union divides its members into a number of divisions, and has rules with respect to changing divisions within the Union. A person in one division must comply with these rules in order to change divisions.

12 International Brotherhood of Teamsters Constitution (Article 19, Section 13) says the following:

Exhaustion of Remedies

Section 13(a). Every member, officer, elected Business Agent, Local Union, Joint Council, or other subordinate body against whom charges have been preferred and disciplinary action taken as a result thereof, or against whom adverse rulings or decisions have been rendered or who claims to be aggrieved, shall be obliged to exhaust all remedies provided for in this Constitution and by the International Union before resorting to any court, tribunal, or agency against the International Union, any subordinate body, or any officer or employee thereof.

\* \* \*

(c). The trial and appeals procedure provided herein is also available to and must be followed by any active or inactive member who is aggrieved by any decision, ruling, opinion, or action of the Local Union, membership, officers, or Executive Board, excluding collective bargaining matters and decisions issued under a dispute resolution procedure established in a collective bargaining agreement.

III. POSITIONS OF THE PARTIES

13 Wild takes the position that the Union denied him membership improperly and asks that his membership be reinstated. Wild asserts the fact he signed a membership card, worked on Safety Glass, and proved as much through submitting a pay stub at the Union office, entitles him to membership in the Union. He also points to the Union's November 4, 2008 letter which promised membership to anyone who worked on Safety Glass and proved this through presenting a pay stub. Wild argues there are drivers on the dispatch list who do not have the requirements the Union is seeking from him.

14 The Union argues Wild abandoned his application for membership. He failed to comply with the Union's rules regarding transfer between divisions within the Union, and failed to upgrade his licence or meet the necessary requirements to obtain membership. The Union says Wild was suspended in 2006, did not appeal that suspension and his status is that of a suspended member.

IV. ANALYSIS AND DECISION

A. Section 12

15 Wild applies under Section 12 of the Code which reads, in part, as follows:

Duty of fair representation

12 (1) A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith

(a) in representing any of the employees in an appropriate bargaining unit, or

(b) in the referral of persons to employment

whether or not the employees or persons are members of the trade union or a constituent union of the council of trade unions.

16 Under Section 13 of the Code, an applicant must disclose sufficient evidence that the contravention of Section 12 has apparently occurred. If the applicant does not do so, the complaint is dismissed. Wild's complaint does not set out why the Union's behaviour was arbitrary, discriminatory or in bad faith. An applicant must do so in order to present a case that the contravention has apparently occurred: *James W.D. Judd*, BCLRB No. B63/2003, 91.C.L.R.B.R. (2d) 33.

17 I note that even though Wild's complaint does not specifically set out where he feels the Union has acted contrary to Section 12 of the Code, I add that I am unable to find any allegation in his complaint which would constitute such a violation. Wild was told by the Union what he needed to do to obtain membership and the facts demonstrate he simply failed to follow through with the requirements for membership and dispatch. Furthermore, the facts establish that Wild was suspended when he was a member of the Union in the catering division, and did not take the steps described in the constitution to place himself back in good standing. The evidence also demonstrates that Wild had the opportunity to inform the Union that he was previously a member, but failed to do so when he filled out his application for membership card. The membership requirements stated by the Union do not appear to be arbitrary or discriminatory. While there is the suggestion by Wild that these requirements are not uniformly applied, his complaint does not provide any clear particulars which would establish this. There is no evidence of bad faith by the Union.

18 Wild's complaint does not explain how the Union's conduct was arbitrary, discriminatory or in bad faith, nor have I been able to find or infer any such conduct from his complaint. I find under Section 13(1)(a) of the Code that Wild's complaint does not disclose a case that an apparent contravention of Section 12 has occurred.

B. Section 10

19 Section 10(1) of the Code says the following:

Internal union affairs

10 (1) Every person has a right to the application of the principles of natural justice in respect of all disputes relating to

(a) matters in the constitution of the trade union,

(b) the person's membership in a trade union, or

(c) discipline by a trade union.

20 Wild complains the Union improperly denied him membership in the Union. He asserts the Union's letter of November 4, 2008 is an absolute promise of membership in the drivers division of the Union if a pay stub from Safety Glass is presented. Wild also relies on the conduct of the Union's office staff when he discussed the requirements of membership in light of his working on Safety Glass.

21 I find that the Union's November 4, 2008 letter was not an unconditional promise of membership. There were several conditions stated in the letter. Furthermore, the letter contains a paragraph which puts the reader on notice that the Union's historical practice is that each new member must meet the requirements for their applicable division before they will be dispatched for work. The Union stated its requirement, which is reflected in the documents before me, that a member must have a Class 3 driver's licence, a dangerous goods certificate, and other requirements. I find there is nothing unusual or extraordinary about the requirements listed. The Union's office staff informed Wild of these requirements. Wild does not dispute that he failed to satisfy the requirements.

22 It is important to note that Wild was not a new member to the Union. He had a history with the Union working in its catering division. His membership was suspended three times for non-payment of dues, and he has not appealed these suspensions. The last suspension from 2006 was still in place when Wild signed a new Union card in 2007. Unfortunately, Wild was not forthcoming about the history of his membership in his initial complaint to the Board, nor was he forthcoming with this information when he signed his membership application while working on Safety Glass. He neglected to inform the Union when the application card clearly requested information regarding previous Union membership. Furthermore, he did not mention this to any of the Union office staff that he dealt with. Wild presented himself in his initial complaint to the Board and to the Union staff as new to the Union with no previous history with the Union. This was not the true state of affairs concerning his membership in the Union, however.

23 I find the Union's behaviour was consistent with its November 4, 2008 letter to Wild and consistent with Wild's history with the Union, including his 2006 suspension for non-payment of dues when he worked in the Union's catering division. When Wild

originally presented himself as an employee from the Safety Glass production, he reports being informed by Union office staff that he would need to do a number of things before he was eligible for dispatch. Wild says he was told “that [i]n order to be dispatched, I would need to upgrade my licence and get a class 3, and also to take a set educate [sic] course. At the time I had a class 4.” Wild also recalls being asked to complete a dangerous goods course and a number of other requirements. Wild did not, in his reply submission, report that he had fulfilled any of these requirements, nor did he indicate he had paid his outstanding dues or taken steps to bring himself back into good standing. Wild had the opportunity to fulfil these requirements, but did not do so. Given his failure to comply with the Union’s requirements for membership and for dispatch, the Union’s conclusion that he had abandoned the process of becoming a member appears to be *bona fide*.

24 I do not give weight to the fact that dues were deducted from his paycheque and remitted to the Union, because I accept this was done automatically by virtue of ordinary administrative processes.

25 When the Union discovered Wild’s previous record with the Union and the fact he was a member of its catering division who was under suspension, they informed Wild of this and met with him to discuss the situation. The Union heard from Wild before it came to the conclusion that his status was that of a suspended member of the catering division. The Union’s conclusion is consistent with Wild’s history with the Union, and with the requirements of becoming a member of the drivers division.

26 There is no evidence offered by Wild that the Union’s process was not in keeping with the principles of natural justice. Wild’s complaint does not say that he was unable to make his case or that the Union’s process was unfair in any way.

27 I also find that Wild had the opportunity to appeal the decision of the Union’s Executive Board, but did not do so. The Union’s constitution called for him to appeal to Joint Council 36. Wild did not say in his complaint why this was not possible or appropriate in the circumstances. As such, he has not exhausted his internal remedies within the Union and his application is dismissed for that reason as well.

V. CONCLUSION

28 Wild’s application under Sections 10 and 12 of the Code is dismissed.

LABOUR RELATIONS BOARD

**“BRUCE R. WILKINS”**

BRUCE R. WILKINS  
VICE-CHAIR