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File: 1213

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Dear Sirs:

Re: UNIFOR Local 467 –and– UNITE HERE, Local 40 (Larry Jandu)

UNITE HERE, Local 4 (the employer) applies for an order for pre-hearing disclosure of particulars. UNIFOR Local 467 (the union) submits what is being sought is evidence, not particulars. The application was heard yesterday by telephone conference.

The employer imposed an indefinite, non-disciplinary suspension on Larry Jandu from his position as a full-time Union Representative after he was approved on November 18, 2015 medical fit to begin returning to work the next day on a 2-day per week basis. The medical approval was communicated by union counsel to employer counsel in a letter dated December 1, 2015. The employer has not permitted Mr. Jandu to return work.

The suspension refusing Mr. Jandu's return to work is rooted in events in the September 2013 hiring process; his previous employment with Service Employees' International Union Local 1 Canada (SEIU) and B.C. Government and Service Employees' Union (BCGEU); and a lawsuit by BCGEU against Mr. Jandu and the SEIU.

The suspension was foreshadowed by allegations in a letter from the employer to Mr. Jandu on April 15, 2015 and subsequent discussions relating to that letter, including without prejudice discussions attended by counsel on September 15, 2015.

The employer asserts the April 15, 2015 letter arose from information it first obtained in March 2015 from an undisclosed source. The information was investigated by employer counsel between that date and April 15th.

In the December 1st letter, union counsel wrote:

> We have now been able to do some more investigating into this matter. While Mr. Demand and Mr. Jandu may have differing recollections, there is third party corroboration of the fact Mr. Demand was aware of the lawsuit at the time he hired Mr. Jandu. This determinative evidence will be lead should this matter be brought before an arbitrator.

Employer counsel requested particulars on December 12th.

By February 2015, discussions were not resolving the difference, which was heading to arbitration. It was clear there were differing recollections of what was said in the September 2013 hiring process.

On May 2, 2016, union counsel provided particulars of its case. They do not include any particulars about "third party corroboration" that Mr. Demand had knowledge of the lawsuit as early as September 2013. Employer counsel requested particulars on May 9th. Union counsel replied May 16th:

> We will be calling third-party evidence to corroborate Mr. Jandu's version of the events around his hiring. However, you are requesting our evidence, not particulars. The "particulars" to date have already gone far beyond what is required and we decline to provide further information about the evidence we will be calling at this time. Our particulars remain that Mr. Demand knew of the lawsuit at the time he hired Mr. Jandu. However, we are not required to divulge all the evidence we will be calling to establish this fact.

Employer counsel applies for an order that the union provide the name of the third party; the date of the events he or she witnessed whatever corroborates Mr. Jandu's version of event; where the events occurred; who was present; what was said; and what, if any, documents were created.

The third party's corroboration is not asserted to be corroboration of what was said or not said by Mr. Jandu or Mr. Demand to one another in their conversations in the September 2013 hiring process. It appears there will be conflicting recollections and, perhaps, issues of credibility.

Rather, the union asserts the third party evidence will corroborate "Mr. Jandu's version of the events around his hiring", which presumably includes "the fact Mr. Demand was aware of the lawsuit at the time he hired Mr. Jandu." This might be relevant to Mr. Jandu's recollection and credibility. It appears it will be relevant to Mr. Demand's recollection and credibility because the employer's account has been that Mr. Demand first learned about the lawsuit in March 2015.

Clearly, the testimony of the third party witness is potentially relevant to the material fact whether Mr. Demand did or did not have knowledge of the lawsuit at the time he hired Mr. Jandu.

This is not an application to disclose a document as discussed in *Hospitality Industrial Relations (Richmond Inn Hotel Ltd.)* [2015] B.C.C.A.A.A. No. 132 (Dorsey).

This is an application for provision of particulars about an event(s) of which the employer and its counsel have no information. They cannot prepare to test, challenge or respond to this testimony without particulars. With an agreement the employer will proceed first at the hearing, Mr. Demand will be confronted (the employer says ambushed) on cross-examination about an event(s) about which he and his counsel have no foreknowledge.

I agree. As the employer submits, particulars are necessary for it to have sufficient factual basis to know the essential elements of the union's claim. This is a critical component of both a fair hearing and "promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes." (*Labour Relations Code*, s. 2(e);

British Columbia Women's Hospital and Health Centre Society [1995] B.C.L.R.B.D. 346)

Therefore, pursuant to section 92(1)(c) of the *Labour Relations Code*, I order the union to provide to the employer the following particulars;

1. The name(s) of the third party;
2. The date(s) of the event(s) witnessed
3. The place(s) where the event(s) occurred;
4. The name(s) of the person(s) present at the event(s); and
5. The substance of what was said by whom at the event(s);

I further order than any documents in the possession or control of the union relating to or created following the event(s) are to be disclosed to the employer.

The union seeks a delay in provision of particulars and disclosure of any document to a date closer to the first day of hearing. My understanding is that the third party will not willingly agree to testify. The union seeks to limit the time during which the employer has knowledge of the identity of the third party.

This person should be made aware he or she has the protection of section 5 of the *Labour Relations Code*.

> **5.** (1) A person must not
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> (a) refuse to employ or refuse to continue to employ a person,
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> (b) threaten dismissal of or otherwise threaten a person,
>
> (c) discriminate against or threaten to discriminate against a person with respect to employment or a term or condition of employment or membership in a trade union, or
>
> (d) intimidate or coerce or impose a pecuniary or other penalty on a person,
>
> because of a belief that the person may testify in a proceeding under this Code or because the person has made or is about to make a disclosure that may be required of the person in a proceeding under this Code or because the person has made an application, filed a complaint or otherwise exercised a right conferred under this Code or because the person has participated or is about to participate in a proceeding under this Code.

In addition, this person should know counsel have responsibilities to inform their clients of this protection.

Further, as custodian of the integrity of this arbitration process, I assert jurisdiction as part of this arbitration to hear and finally decide any complaint the third party has that he or she has suffered any retaliation from anyone as a consequence of this decision.

I order the union to provide particulars and disclose any documents to the employer no later than June 10, 2016. This will allow the union time to prepare particulars and copy any documents. It will also allow the union time to provide a copy of this decision to the third party.

James E. Dorsey, Law Corporation
per:

James E. Dorsey