

LABOUR RELATIONS CODE  
(Section 84 Appointment)  
ARBITRATION DECISION

UNIFOR LOCAL 467

UNION

UNITE HERE, LOCAL 40

EMPLOYER

(Re: Narvair (Larry) Jandu – Ongoing Suspension from Work)

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Arbitration Board:	James E. Dorsey, Q.C.
Representing the Union:	Leo McGrady, Q.C. and Sonya Sabet-Rasekh
Representing the Employer:	Jonathan Hanvelt
Dates of Hearing:	September 19 – 20; and October 3 – 4, 2016
Date of Decision:	October 27, 2016

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## **1. No Formal Grievance, Additional Reasons for Suspension and Jurisdiction**

[1] What did Narvair (Larry) Jandu disclose to President Robert Demand in September 2013 during an interview for a Union Representative/Organizer position?

[2] Their conflicting testimony is central to whether the employer had cause to suspend Mr. Jandu in April 2015 while he was on medical leave and to continue the suspension in December 2015 after he was cleared to return to work.

[3] Did Mr. Jandu disclose to Mr. Demand that the BC Government and Service Employees' Union (BCGEU) had sued him and Service Employees' International Union Local 1 Canada (SEIU) claiming he had breached a confidentiality agreement between BCGEU and Mr. Jandu? BCGEU's claim was that Mr. Jandu used information obtained as an employee in 2010 campaigning to organize a group of unrepresented employees of Family Services of Greater Vancouver and in 2011 obtained certification for the same group of employees on behalf of SEIU.

[4] Before and since the union and employer's agreement to refer the ongoing suspension to arbitration on April 6, 2016, Mr. Jandu has continued to be an employee of UNITE HERE, Local 40 with medical benefits, but no work or wages.

[5] There is no written grievance. The agreed referral to arbitration was to resolve an impasse on a difference about disclosure of the lawsuit at the job interview and the demand for an explanation from Mr. Jandu. Since the referral, based on information

acquired in pre-hearing processes,<sup>1</sup> the employer has added three more reasons for the ongoing suspension: 1) an alleged discrepancy between the reasons BCGEU terminated Mr. Jandu's employment and Mr. Jandu's characterization to Mr. Demand of the termination of his employment; 2) Mr. Jandu's response to the employer's requests for explanations about the lawsuit; and 3) Mr. Jandu's representations at the interview about the character of his BCGEU employment.

[6] The union and employer want a final resolution of all issues, including the employer's allegations based on information acquired after the referral to arbitration. They agreed to expand the scope of the referral to include the additional reasons for suspension.

[7] The union and employer agree I have jurisdiction under their collective agreement and the *Labour Relations Code* to determine whether the initial and ongoing refusal to return Mr. Jandu to work, characterized as a non-disciplinary suspension, is justified. If it is, the employer intends to dismiss Mr. Jandu. If it is not, I am to reserve jurisdiction on the amount of compensation to be paid to Mr. Jandu for lost wages and any other remedy.

[8] By agreement, the employer proceeded first. Mr. Demand and other employer witnesses testified before Mr. Jandu and other union witnesses testified.

## **2. Preface to September 2013 Job Interview Between Strangers**

[9] Despite being active in the local trade union community, Messrs Jandu and Demand had not met and brought very different experiences to their interview meeting.

### **2.01 Mr. Jandu's Employment with BCGEU (2005-10)**

[10] Mr. Jandu is a 47-year-old husband and father of two children attending university. He and his family reside as tenants in the same home as his parents in Surrey. After obtaining a diploma in psychology at Kwantlen College, he was employed as a community social service worker helping vulnerable persons.

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<sup>1</sup> Letter Decision, May 9, 2016 (unreported) (pre-hearing disclosure of documents); Letter Decision, June 2, 2016 (unreported) (pre-hearing provision of particulars); *UNITE HERE, Local 40 (Larry Jandu)* [2016] B.C.C.A.A. No. 73 (Dorsey) (August 4, 2016, admissibility of evidence);

[11] In 1996, he became a Shop Steward. In 2002, he became a table officer and in 2004 President of his local union. From November 14, 2005 to December 31, 2010, he had periods of union leave from his social services employer to work in temporary positions in the BCGEU organizing department. The recurring terms of temporary employment were continuous from mid-2008 to 2010. He worked from the Fraser Valley Area office in Langley. "This union has defined me for 14 years."<sup>2</sup>

[12] In 2007, Mr. Jandu was one of the BCGEU organizers seeking to represent over 700 employees working at General Motors Place Arena represented by UNITE HERE, Local 40.<sup>3</sup> He testified his and his fellow organizers' hearts were not in the unsuccessful campaign, but pursued it to prevent the Christian Labour Association of Canada (CLAC) from winning representing from UNITE HERE, Local 40.

[13] Early in 2010, BCGEU asked its employees to sign a confidentiality and proprietary information agreement, which it had been discussed with Mr. Jandu's union, Communications, Energy and Paperworkers Union of Canada, Local 467 (CEP).<sup>4</sup> This was after BCGEU employees left and went to the British Columbia Nurses' Union where they supported its membership campaign among Licensed Practical Nurses represented by BCGEU and other unions. Mr. Jandu signed the confidentiality agreement on February 9, 2010.

[14] At the time, he had a one-year term employment contract expiring December 31, 2010. In May 2010, Mary Rowles became BCGEU Director of Organizing and Field Services. Mr. Jandu reported to Organizing Coordinator Chris Anderson, who reported to Ms Rowles.

[15] Ms Rowles testified situations arose in the Organizing Department in the fall of 2010 that she and two fellow Directors investigated. They interviewed Mr. Jandu and other department employees.

[16] One of the matters being investigated was a voice mail report to Human Resources Director Nancy Gillis on October 28, 2010 from a male Downtown East Side

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<sup>2</sup> Larry Jandu's Statement, November 28, 2010, Exhibit 1, Tab 3, p. 13

<sup>3</sup> *Aramark Entertainment Services (Canada) Inc.* [2007] B.C.L.R.B.D. No. 207

<sup>4</sup> On January 5, 2012, Nancy Gillis deposed in an affidavit in the lawsuit: "The CEP discussed the confidentiality agreement with the CEP and the CEP proposed changes to the agreement that we accepted. The final version of the confidentiality agreement was accepted by the CEP." (¶ 5)

neighborhood street person that Mr. Jandu had stolen a projector from him. The caller had met Mr. Jandu's co-worker both at the time of the alleged theft and more recently in detox. He wanted the projector returned. By November 4<sup>th</sup>, Ms Gillis had located the caller and was trying to meet with him.

[17] On November 17<sup>th</sup>, Ms Rowles, Ms Gillis and Director David Vipond interviewed Mr. Jandu, who was accompanied by CEP Shop Steward Gary Hall, a Staff Representative and lawyer in the BCGEU Advocacy Department.

[18] After the interview, Mr. Jandu wrote a lengthy statement to the Directors dated November 28<sup>th</sup> explaining in more detail twelve matters raised in the interview.

[19] He wrote he did not steal the projector. He paid \$400, which he borrowed at the moment of purchase from his co-worker: "I think I purchased a scam projector that is worth not much different from what I paid for it."<sup>5</sup> He wrote the company selling this projector on line for \$6,499 is perpetrating a scam. "Whether one buys something on the street, in a pawn shop, or through a classified ad, there is always a chance that its pedigree is suspect. I have now a growing suspicion that this projector is a scam and will be pursuing that investigation further."<sup>6</sup>

[20] Ms Rowles testified she was greatly concerned Mr. Jandu had purchased what he likely believed to be stolen property and did so while engaged in an organizing campaign among employees of an employer in the Downtown East Side neighborhood.

[21] Mr. Jandu testified he fulfilled his duty to BCGEU with his complete disclosure in his November 28<sup>th</sup> statement acknowledging he made mistakes. However, for the first time on cross-examination, he said that when he bought the projector at what appeared to be a flea market he thought it was stolen property and knew it is a criminal offense to knowingly possess stolen property. He had not previously acknowledged this to the BCGEU Directors. He emphasized the purchase was outside working hours. He and other Organizers engaged in the campaign had finished an end of day coffee shop meeting.

[22] The second matter that concerned Ms Rowles was that Mr. Jandu knew and had enabled the co-worker, from whom he says he borrowed the \$400 for one day, in drug

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<sup>5</sup> Larry Jandu's Statement, November 28, 2010, Exhibit 1, Tab 3, p. 20

<sup>6</sup> Larry Jandu's Statement, November 28, 2010, Exhibit 1, Tab 3, p. 22

dependency without bringing the co-worker's dependency to the attention of their employer. The co-worker had told Mr. Jandu in 2009 about using cocaine and he had noticed erratic behaviour in 2010 that led him to suspect drug use. He had agreed to be a false landlord reference for the co-worker because the real landlord was unlikely to give a good reference for a tenant always in rent arrears.

[23] Mr. Jandu and his family were in a motor vehicle accident in March 2010 after a trip to India from February 11<sup>th</sup> to March 23<sup>rd</sup>. He was prescribed Cyclobenzaprine. He gave some to his co-worker because the co-worker's medication prescription had expired or the co-worker had forgotten medication at home.

[24] Mr. Jandu testified he and his co-worker were like siblings and their family members became friends. He lent the co-worker money and helped rescue the co-worker from financial problems before April 2010 when the co-worker went on medical leave.

[25] The co-worker's erratic behaviour continued after returning to work September 9<sup>th</sup>. Mr. Jandu testified that in September he spoke to his father, a homeopathic doctor, about signs of drug addiction and unsuccessfully attempted to have his co-worker visit his father. The co-worker's behaviour included bumming cigarettes in the Downtown East Side when they were campaigning.

[26] On September 30<sup>th</sup>, Mr. Jandu was in another motor vehicle accident. In October, he saw the co-worker had drug paraphernalia and physical signs of injection use. On October 7<sup>th</sup>, he and other co-workers decided to report to management. A week later, he suspected his co-worker was making fraudulent claims for health care benefits, which he reported to the benefit administrator, but not to the employer.

[27] Later, he learned the co-worker was indebted to ICBC. How the co-worker, who had a heroin addiction and financial problems, was able to lend him \$400 without notice at the time he acquired the projector was not addressed.

[28] Mr. Jandu drove the co-worker to and from work until the co-worker obtained a vehicle on October 22<sup>nd</sup>. He testified they had a close relationship, but it deteriorated during October. On November 28<sup>th</sup>, he wrote: "I believe this is why I was targeted with that anonymous phone call to Nancy from a street character ..." <sup>7</sup> who learned his name

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<sup>7</sup> Larry Jandu's Statement, November 28, 2010, Exhibit 1, Tab 3, p. 21

from his co-worker when they met in detox. He wrote the co-worker's efforts to silence him would not succeed because: "I owe a duty of utmost candour to the BCGEU about everything that has taken place and I have done my best to meet that duty in this statement."<sup>8</sup>

[29] On cross-examination, Mr. Jandu testified when he heard the voice message recording at the November 17<sup>th</sup> interview he was stunned by the report he had stolen a projector and the voice he heard was not the voice of the seller with whom he had spoken for ten minutes when he bought the projector. On November 28<sup>th</sup>, he wrote it was not the seller's voice. He testified what was happening became clearer when he learned later the voice was the estranged husband of the co-worker.

[30] Despite his lengthy statement, on December 1, 2010, Ms Rowles told Messrs Jandu and Anderson that Mr. Jandu's term of temporary employment would not be extended beyond December 31<sup>st</sup>. Mr. Jandu should notify his community services employer he would be returning from union leave. She knew Mr. Jandu was hoping to return to the Organizing Department and would clarify if this break in union leave would be short, lengthy or permanent.

[31] Mr. Anderson was unhappy, but was not been able to change Ms Rowles' decision that Mr. Jandu's term would not be extended. On cross-examination, Mr. Jandu testified he understood on December 1<sup>st</sup> that he would not be recalled until one day after nine months when he would lose his seniority under the CEP and BCGEU collective agreement.

[32] Ms Rowles had serious unanswered concerns about the projector purchase; Mr. Jandu's enabling of his co-worker in a drug addiction; and his general credibility. She regarded his explanations for his actions as multiple and embroidered as they were augmented. He knew his duty to his employer, but had not fulfilled it.

[33] Ms Rowles testified she later regretted allowing him to work on organizing campaigns in December without restricting any of his activities. She should have suspended him. She did not communicate to Mr. Jandu her strongly held opinion he would never be recalled because it was a festive season; he was a union activist; there

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<sup>8</sup> Larry Jandu's Statement, November 28, 2010, Exhibit 1, Tab 3, p. 22

are intense emotional ties among the members of the Organizing Department; there are political components to some staffing decisions; and she had to speak to the President.

[34] Mr. Jandu testified Mr. Anderson was supportive and said he believed Mr. Jandu would be recalled after a short break. Mr. Jandu was being punished for his co-worker's drug dependency and Mr. Anderson would try to have him recalled before nine months.

[35] His last day at work was emotional for him and his co-workers, some of whom he testified knew he was not coming back. While he went back for lunch with former co-workers a couple of times, he had no further communication with Ms Rowles after a December staff meeting.

[36] Initially, Mr. Jandu clung to Mr. Anderson's comforting observation that the decision not to extend or renew his term was punishment for his co-worker's failings and not because of his failings and that, in time, he would be rehired.

[37] Within two months, Mr. Jandu knew this was not likely. He had not had a reply to his November 28<sup>th</sup> written statement or a follow-up meeting. He spoke to Mr. Hall, who spoke to Ms Gillis. She emailed Ms Rowles and Messrs Vipond and Anderson on February 28, 2011. "Gary Hall has contacted me on Larry Jandu's instruction to advise us that Larry does not wish to meet with us to discuss our reasons for not recalling him to work in the Organizing department. He understands he will not be recalled and doesn't need to know why." On cross-examination, Mr. Jandu acknowledged he told Mr. Hall not to arrange a meeting.

[38] Despite his instructions to Mr. Hall, Mr. Jandu testified he continued to expect to be recalled before the nine months expired. He did not want to meet because of the after effects he was experiencing from all the traumatic events in 2010. He testified he continued to believe he would be recalled until June, when he got a position with SEIU.

[39] Inconsistently, he told Mr. Demand in September 2015 that he had expected to be recalled in nine months, which he testified he was told by Ms Rowles, who he says also told him it would be three, six or nine months.

[40] I find Mr. Jandu knew by the end of February that he would not be recalled by BCGEU. This was the message and effect of discontinuing discussions with the Directors through Mr. Hall. His statement of November 28<sup>th</sup> had not had the desired

effect and he would have to remain with his social services employer or consider other options for employment.

## **2.02 Mr. Jandu's Employment with SEIU and BCGEU Lawsuit (2011-13)**

[41] On June 25, 2011, Mr. Jandu began employment with SEIU. On August 9<sup>th</sup>, Ms Gillis wrote Mr. Jandu, in part:

I understand that you are pursuing organizing opportunities with other unions. I write to remind you of the confidentiality agreement which you signed when employed with the BCGEU. I have attached a copy for your reference. Please note that your obligations under this agreement continue after the termination of your employment here.

[42] On September 6<sup>th</sup>, SEIU was certified to represent a bargaining unit of 45 employees of Family Services of Greater Vancouver.<sup>9</sup> SEIU had no communication with this group of employees before Mr. Jandu became its employee.<sup>10</sup> Mr. Jandu was given a commission of \$1,200 by SEIU for obtaining the bargaining rights for this group of employees. He testified he opposed receiving additional pay for this work and gave the money to a charity.<sup>11</sup>

[43] After Mr. Jandu received the August 9<sup>th</sup> letter enclosing a copy of the confidentiality agreement he signed, he did not pause to reflect and seek advice from Mr. Anderson, Mr. Hall or any other former colleague at BCGEU or BC Federation of Labour; consult a lawyer; direct his contact at Family Services of Greater Vancouver to Organizers at BCGEU; or simply decide it was in his better long term interest in the labour movement, which he says has a long memory, to pass up this opportunity and find another target group of employees. Instead, he pressed on to acquire a certification for SEIU and a commission for himself within his first three months of employment with SEIU.

[44] BCGEU had communications with employees of Family Services of Greater Vancouver in 2007, 2008 and 2010.<sup>12</sup> BCGEU's organizing file includes an organizing target profile, contact sheet recording any employee communication, employee emails,

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<sup>9</sup> BCLRB CBR ID 40222, [www.lrb.bc.ca/reports/2011SEPTEMBER\\_C.htm](http://www.lrb.bc.ca/reports/2011SEPTEMBER_C.htm)

<sup>10</sup> William Hulme, Examination for Discovery, July 20, 2012, pp. 10; 13; 18

<sup>11</sup> Examination for Discovery, July 19, 2012, pp. 183 – 184; Defendants' Offer to Settle letter, July 16, 2016

<sup>12</sup> Lawsuit affidavit of Chris Anderson, December 22, 2011, ¶ 5; Lawsuit affidavit of Earl Moloney, January 6, 2012, ¶ 4 - 6

membership applications Mr. Jandu obtained, memos to file and a list of the names and telephone numbers of the Youth Detox staff, which Mr. Jandu had obtained.

[45] Mr. Anderson deposed he spoke to Mr. Jandu in February 2011 and Mr. Jandu “was still getting calls on his personal cell phone regarding organizing targets. Mr. Jandu’s personal cell phone number was used on leaflets and many other communications during the organizing campaign for employees of Family Services.”<sup>13</sup>

[46] Both Mr. Anderson and Muriel Labine, a BCGEU Organizer, spoke to Mr. Jandu on the day he applied for certification on behalf of SEIU at the Langley office of the Employment Standards Branch.

[47] Mr. Anderson deposed:

I talked to the defendant, Larry Jandu, on the day that he went to the LRB to make the application for certification of the unit of employees at Family Services. I told him that I thought his conduct was offside the confidentiality agreement and he told me that the SEIU lawyers told him that he was not in breach of the confidentiality agreement.<sup>14</sup>

Mr. Jandu testified this is accurate.

[48] Ms Labine deposed: “He told me that he had spoken to SEIU lawyers about the confidentiality agreement and he could not see what the problem was.”<sup>15</sup> Mr. Jandu testified he recalls speaking to Ms Labine, but he had not spoken to SEIU lawyers. He assumed William Hulme, SEIU Regional Support Manager based in Ontario but responsible for British Columbia, had spoken to SEIU lawyers.

[49] The BCGEU lawsuit filed in October claimed Mr. Jandu used confidential information obtained while an employee of BCGEU “as a ‘springboard’ or ‘head-start’ for the benefit of SEIU to conduct SEIU’s campaign, without authorization by BCGEU, the particulars of which are not known to BCGEU but which are known to Mr. Jandu and SEIU.”<sup>16</sup> Mr. Jandu denied this:

In fact, in 2011 certain persons who were employees of Family Services telephoned him and indicated that they were interested in participating in a certification application. In addition, Mr. Jandu contacted a small number of employees whose telephone numbers he knew from memory.

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<sup>13</sup> Lawsuit affidavit of Chris Anderson, December 22, 2011, ¶ 10 - 11

<sup>14</sup> Lawsuit affidavit of Chris Anderson, December 22, 2011, ¶ 12

<sup>15</sup> Lawsuit affidavit of Muriel Labine, January 6, 2012, ¶ 3

<sup>16</sup> Supreme Court of British Columbia, Amended Notice of Civil Claim, October 14, 2011, Vancouver Registry No S116721, ¶1.18

As a result of a number of these phone calls, Mr. Jandu built a list of potential employees to contact and gradually created an organizing campaign for employees at Family Services based on that information.<sup>17</sup>

[50] In his testimony on Examination for Discovery, Mr. Jandu agreed this was incorrect. He received a telephone call from one person and knew some other names from memory, but not their telephone numbers.<sup>18</sup> He had no telephone numbers because he lost his cellular telephone in March 2011 and it was never found.<sup>19</sup> Mr. Hulme testified on Examination for Discovery that SEIU had no notice of, or interest in, the Family Services of Greater Vancouver employees until Mr. Jandu told him about the call he received and his BCGEU history attempting to organize the employees.<sup>20</sup>

[51] The acrimonious lawsuit included a motion for substituted service on Mr. Jandu; BCGEU motions to produce documents; an order to answer questions; and Examinations for Discovery. It continued into 2013 when BCGEU decided it had gone as far as it could to test the strength of the confidentiality agreement and instructed counsel to settle if there was an opportunity.

[52] On July 16, 2013, the defendants made an Offer to Settle under Rule 9-1 of the B.C. Supreme Court Civil Rules, which is not an admission. BCGEU accepted the Offer on July 22, 2013 and received a payment to which Mr. Jandu did not contribute. Mr. Vipond signed a release on July 23<sup>rd</sup>.

[53] Mr. Jandu's lawyer told him the lawsuit was resolved. Mr. Jandu testified it was SEIU, not him, who made the settlement proposal. He did not know there was a final step in the court process to conclude the lawsuit. A Consent Order was entered Wednesday, September 25, 2013. On a Friday before or after that date, Mr. Jandu was interviewed by Mr. Demand.

### **2.03 Mr. Jandu Contacts UNITE HERE, Local 40 Looking for a Job (2013)**

[54] In 2013, while employed by SEIU, Mr. Jandu felt there was not enough work to sustain his position. He called UNITE HERE, Local 40 looking for a job and spoke to Staff Director David Klainbaum. Mr. Jandu initially testified he made cold calls, but later

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<sup>17</sup> Supreme Court of British Columbia, Response of Civil Claim, November 18, 2011, Vancouver Registry No S116721, ¶ 6 - 7

<sup>18</sup> Examination for Discovery, July 19, 2012, pp. 232 - 233

<sup>19</sup> Examination for Discovery, July 19, 2012, pp. 45 - 46

<sup>20</sup> Examination for Discovery, July 20, 2012, pp. 13; 18

testified he made only the one call to UNITE HERE, Local 40. Messrs Klainbaum and Jandu did not know one another.

[55] In Mr. Klainbaum's senior year in 1994 at Yale University in a Bachelor of Arts (Political Science) program, he volunteered with UNITE HERE, which represented 2,000 employees on campus. After graduation, he was hired and given a one-year assignment in California. The year became six years organizing and servicing employees in tribal casinos in Palm Springs. He was appointed to a Director position and moved to Sacramento where his focus continued to be employees in tribal casinos. In 2008, he transferred to his current assignment in British Columbia. His duties include overseeing internal and external organizing. Since 2008, he has become a close confidant to Mr. Demand, who testified they co-lead the local.

[56] Mr. Klainbaum spoke to Mr. Demand about Mr. Jandu's call. They were not willing to hire someone currently employed by another union. Mr. Klainbaum informed Mr. Jandu. A month or six weeks later, Mr. Jandu called again. He had been laid off.

[57] The employer had advertised for a temporary, full-time Union Representative/Organizer position. The position was to "work with members and unorganized workers to build the leadership and solidarity necessary to build a progressive and strong labor union." The job posting, initially drafted by Secretary-Treasurer Shelly Ervin and edited by Mr. Demand, was posted on Charity Village.<sup>21</sup> Resumes with references were to be submitted to Mr. Demand by September 5, 2016.

[58] Ms Ervin, a union activist, began employment with UNITE HERE, Local 40 as an Organizer and Representative in 1996. She was elected and re-elected Secretary-Treasurer in 2003 and 2008. In 2013, she was acclaimed.

[59] Ms Ervin testified that she has had an ongoing difference with Mr. Demand over the manner and level of servicing being provided to members, which is a "bone of contention" for her. Although not explored in the testimony, this appears to be a recurring difference in some trade unions over the balance between servicing or representing members by trying to solve problems for them and internal organizing or mobilizing members to involve them in solutions.

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<sup>21</sup> <http://charityvillage.com/>

[60] Ms Ervin testified that, although Mr. Demand does not discuss many things with her, she was to attend applicant interviews for this temporary position.

[61] When Mr. Klainbaum informed Mr. Demand that Mr. Jandu had called again and was no longer employed by SEIU, a Friday afternoon interview was scheduled.

#### **2.04 Mr. Demand's Assignment to Local 40 (2007-16)**

[62] From 1985 to 1989, after attending Miami University in Oxford, Ohio, Mr. Demand worked several jobs before moving to Syracuse where he volunteered for one year with HERE (Hotel Employees and Restaurant Employees). He was assigned to a position in Chicago for two years and then to Local 217 in New Haven for two years. Its members were racetrack employees and custodians employed by various employers, including employers on a naval base.

[63] During this time, Mr. Demand trained as an internal organizer and advocate and external organizer of unrepresented employees.

[64] After American unions lost membership in the 1980's, some unions pursued recruitment of new members and focused on building more participatory locals using mobilizing techniques to engage existing rank-and-file members in the life of the union. In the late 1980's, the AFL-CIO established an Organization Institute.<sup>22</sup>

[65] Although not explored in the testimony, I understand internal organizing seeks to increase and gain union power to win conflicts and achieve change by motivating and mobilizing employees. In pursuit of these goals, internal organizing focuses on mobilizing current members to strengthen unions and broaden the struggle for workplace change through targeting, systematic planning, developing committees, one-on-one communications through house calls and other means and other strategies.

[66] Internal organizing drives might be especially appropriate when local unions are not strong enough to achieve contract bargaining goals, to implement changes through the grievance process, to confront and block privatization or contracting-out, or otherwise force an employer to make important changes. It might also have benefits in recruitment of new members.

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<sup>22</sup> [www.aflcio.org/Get-Involved/Become-a-Union-Organizer/Organizing-Institute](http://www.aflcio.org/Get-Involved/Become-a-Union-Organizer/Organizing-Institute)

[67] In 1992, Mr. Demand was assigned as the junior Organizer in a new team at Local 100 in New York City. The goal was to rebuild a local union that had been placed in trusteeship. During this time, he was appointed Assistant Trustee of two locals in New Jersey.

[68] HERE and UNITE (Union of Needletrades, Industrial, and Textile Employees) merged in 2004. The combination of members and money created a strong organization, which withdrew from the AFL-CIO in 2005, when UNITE HERE, SEIU and others formed the alternative Change to Win Federation.

[69] The next troubled local to which Mr. Demand was assigned as Assistant Trustee in 2005 was at Disney World in Orlando. There was a need to build leadership and organizational effectiveness among its 25,000 members.

[70] Meanwhile, in May 2006 in British Columbia, 400 employees of Orca Bay Arena Corporation at General Motors Place chose to leave representation by UNITE HERE, Local 40 for CLAC, Local 501.<sup>23</sup> In 2007, BCGEU sought to raid a unit of 700 employees of Aramark Entertainment Services (Canada) Inc. who worked at GM Place and were represented by UNITE HERE, Local 40.<sup>24</sup> UNITE HERE, Local 40 had lost almost 3,000 members to raids since 2000. President Jim Pearson turned to the international for help retaining its 7,000 members. Canadian Director Nick Worhaug approved.

[71] Mr. Demand accepted an assignment to come to Vancouver as a Director with a team of Organizers and Leads to rebuild the local union. He found weak rank and file participation in the union with problems in approximately 100 workplaces.

[72] His immediate tasks were to lead internal organizing and negotiate a new collective agreement with Aramark Entertainment Services (Canada) Inc. While the team of Organizers and Leads were doing internal organizing, there were disputes with employers over obtaining employee contact and other information to pursue internal organizing and to administer benefits under collective agreements. The health care fund administrator was changed. International staff helped with internal financial reporting and information technology support.

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<sup>23</sup> May 25, 2006, [www.lrb.bc.ca/reports/2006MAY\\_C.htm](http://www.lrb.bc.ca/reports/2006MAY_C.htm)

<sup>24</sup> *Aramark Entertainment Services (Canada) Inc.* [2007] B.C.L.R.B.D. No. 207

[73] Membership lists and contact information are the lifeblood of a union. Mr. Demand was learning about Canadian culture and laws with respect to privacy and employer and employee concerns about the integrity of information provided to the union. Mr. Klainbaum testified it had been easier to get this information in the United States and the union had to initiate proceedings at the Labour Relations Board to obtain membership contact information. In addition, when Organizers knocked on doors, Canadians asked where the Organizer had gotten information about them.

[74] In the same period, post-merger differences within UNITE HERE generated external differences with SEIU that did not spill into British Columbia where SEIU has less presence than elsewhere. However, Mr. Demand was wary of SEIU joining others raiding UNITE HERE, Local 40 units. In time, UNITE HERE re-affiliated with the AFL-CIO and differences between UNITE HERE and SEIU were settled. Mr. Demand testified UNITE HERE and SEIU have had a love/hate relationship.

[75] Mr. Demand remained at Local 40 and was elected President in 2013, when Ms Ervin was acclaimed to her third term. Mr. Pearson became an International Organizer. In the fall of 2013, the union office was moved to Lougheed Highway.

[76] Mr. Klainbaum oversees office staff and three Lead Organizers, Harvey Augustino, Mike Biscar and Zailda Chan. After Mr. Augustino obtained a Bachelor of Arts in 2000 at the University of Santa Barbara, he was a community organizer in Santa Barbara. In 2007, he was assigned to work at Local 40 as a Lead Organizer at Vancouver International Airport. He returned to British Columbia for nine months in 2010 and has been with Local 40 continuously since 2012.

[77] Mr. Augustino testified he and the other two Leads meet weekly with Mr. Klainbaum. Prospective and newly hired Union Representatives/Organizers are among the subjects they discuss.

### **3. Mr. Demand Interviews Mr. Jandu (September 2013)**

[78] Mr. Klainbaum normally interviews candidates for employment. For this 2013 position, the responsibility was taken on by Mr. Demand, who recalls he interviewed all but one candidate himself. He had Ms Chan attend the interview of a female candidate. He recalls the candidates were generally very young and only one other than Mr. Jandu had union experience.

[79] Ms Ervin recalls that on a Friday afternoon in September 2013, she and Mr. Demand interviewed two candidates she named who had worked for other unions. She recalls she was scheduled to attend interviews with Mr. Jandu and others the following Friday afternoon, but she was ill. No one replaced her in the interview with Mr. Jandu. Mr. Demand recalls he had teamed with Ms Ervin when they interviewed applicants for an in-house counsel position.

[80] Mr. Demand testified he spoke to eight or nine candidates in an informal conversational style without prepared questions. He did not make post-interview notes. His goal was to determine the candidates' organizing and union experience and passions and to get a sense of who each person was.

[81] The approximately one-hour interview of Mr. Jandu was at the former union offices on East Hastings Street. Mr. Demand recalls Mr. Jandu spoke about his initial workplace and union activism leading to a BCGEU staff position and his accomplishments. He spoke at length about his participation in organizing employees at the Grand Villa Casino Hotel and Convention Centre. Mr. Demand concluded he had extensive "real" union experience.

[82] Mr. Demand testified that in 2013 he had been seeking to establish a détente with BCGEU and had had discussions with then President Darryl Walker. They were both Officers of the BC Federation of Labour and regularly attended meetings. He testified that, as he had come to learn more about Local 40 and general animosity toward CLAC, he had developed a new perspective of the BCGEU raid at GM Place.

[83] He testified he wanted to understand why Mr. Jandu left BCGEU. He recalls Mr. Jandu said it was a matter of principle when a real mess arose after management learned about the drug dependency of a co-worker, which he had not reported. Mr. Jandu thought he was going to lose his seniority and made the hard decision to leave. Mr. Demand testified: "I appreciated his candour."

[84] Mr. Demand understood Mr. Jandu had a longtime and positive relationship with BCGEU, but became entangled in a workplace problem with a co-worker in his department which he eventually reported to BCGEU. Mr. Jandu spoke proudly of BCGEU and was proud of the work he had done, but this one problem that went sideways might lead to his loss of seniority.

[85] Mr. Jandu did not tell Mr. Demand about sharing prescription drugs with his co-worker or a complaint he stole what he believed to be a stolen projector, which he, in fact, had bought.

[86] Mr. Demand understood Mr. Jandu was a permanent BCGEU employee. He does not recall Mr. Jandu saying he was employed on contracts or for temporary terms. Mr. Jandu simply said he was on staff at BCGEU and explained the work he did. Mr. Demand testified it was not until he hired another employee in 2015 that he learned temporary contracts was a practice at BCGEU.

[87] Mr. Demand believed BCGEU and Mr. Jandu had a longstanding, positive relationship marred only by his personal loyalty to a drug dependent co-worker. Mr. Jandu said only positive things about BCGEU. He said BCGEU wanted him to come back to work for it, although there was a problem in the department in which he worked which he had raised with the responsible persons in BCGEU.

[88] Mr. Demand recalls Mr. Jandu explained to him being hired by SEIU, which wanted to grow in British Columbia; his assignments at SEIU; working as a home-based contractor; and that because there was not enough work for him he chose to leave.

[89] Mr. Demand testified he was intrigued to be sitting with someone who had worked for both BCGEU and SEIU. He raised the issue of trust and specifically raids on UNITE HERE units by both BCGEU and SEIU. Although Mr. Demand was learning more about BCGEU, with which he worked together on social change campaigns, and had respect for SEIU's Justice for Janitors (J4J) campaign in the United States, why should he trust Mr. Jandu in light of the BCGEU raid attempt at GM Place and SEIU raids on UNITE HERE across North America?

[90] Mr. Demand recalls Mr. Jandu said he was not familiar with the history of relationships between SEIU and UNITE HERE. He volunteered he had participated in the BCGEU raid at GM Place in a fight against CLAC. His participation was a revelation to Mr. Demand, who was impressed with his candour and passion in explaining why he had participated in that raid. He was impressed with Mr. Jandu's experience, personality and apparent forthrightness.

[91] Mr. Demand testified Mr. Jandu did not tell him about organizing employees of Family Services while employed by BCGEU and again while employed by SEIU. He did

not tell him about the confidentiality agreement he had signed at BCGEU and said “absolutely nothing” about BCGEU’s lawsuit against him. If he had, that would have been the end of the interview. Someone who used confidential information obtained at one union to organize for another union was not a candidate to be employed. The core of the job was to organize internally and push externally. “Organizing is the core tenant of what we do.”

[92] After the interview, Mr. Demand’s only concern was that Mr. Jandu had participated in the GM Place raid that was infamous within Local 40, had been a key factor in Mr. Pearson’s call for help and a reason why Mr. Demand was at Local 40.

[93] Mr. Jandu testified he was transparent and exercised the utmost candour during the interview. His recollection of the interview differs in key respects.

[94] He denies he told Mr. Demand that he quit or left BCGEU on a point of principle. He told Mr. Demand that there had been an “unfortunate incident” involving a co-worker at BCGEU who he knew was using drugs that “blew out of proportion” and “his contract was not extended.” He explained on cross-examination that it was an unfortunate incident for everyone who worked with the co-worker. Then, he was unsure if he told Mr. Demand it was an “unfortunate incident.” He had not initially testified the incident “blew out of proportion.”

[95] This is why he was no longer at BCGEU. He was punished for the drug use of a co-worker that he did not report soon enough to management. He said if he returned to work for BCGEU one day after nine months he would have no seniority and be junior to others he had trained. He recalls Ms Rowles told him he would be rehired after nine months. She did not tell him he would not be rehired.

[96] He then went to work for SEIU and “absolutely” told Mr. Demand that there had been a lawsuit, which was an important part of his life. He told him BCGEU was “so pissed off” at him that it “even sued me.” While the impression is that the lawsuit was an extension of the punishment, he testified in redirect that at the time he believed that BCGEU was simply trying to prevent him from being at SEIU organizing the Family Services employees.

[97] The effect of his testimony is that Mr. Demand did not ask what the lawsuit was about or if it was about what happened while he was an employee or after he was an

employee of BCGEU. The fact of a lawsuit was stated and disappeared in seconds. Mr. Jandu testified he thought it odd that Mr. Demand did not ask any questions, but then it was really more of a conversation than an interview. The message he took from Mr. Demand's silence was that Mr. Demand had a thicker skin than that.

[98] He testified told Mr. Demand he had been laid off by SEIU, not that he chose to leave. He recalls he or Mr. Demand raised the relationship between SEIU and UNITE HERE and SEIU raiding in Eastern Canada, which Mr. Jandu learned about on a visit to Toronto. He does recall that Mr. Demand said the union members would be furious if their personal data was disclosed to others. Mr. Demand did not speak about trust.

[99] Mr. Jandu wrote the names and telephone numbers of three references for Mr. Demand. One was Mr. Hall at BCGEU who had full knowledge of events in 2010 and knew about the lawsuit. Another was Mr. Hulme at SEIU. He testified the third person also knew about the lawsuit.

[100] Although the job posting asked for references, Mr. Demand testified it is not his practice to speak to applicant selected references because they will give only a positive, glowing opinion. He prefers to rely on his firsthand feel for the individual.

#### **4. Hiring Decision Communicated to Others (September 2013)**

[101] Mr. Demand decided before Monday morning to hire Mr. Jandu. His only reservation was Mr. Jandu's participation on behalf of BCGEU in its GM Place raid.

[102] Monday morning, he spoke to Ms Ervin and told her about Mr. Jandu who was being hired and would start probation. The only issue was that Mr. Jandu had been a BCGEU organizer in the GM Place raid. Ms Ervin wanted to know why he would hire someone who had been involved in a raid on them. She testified she was upset because that "wound was still fresh."

[103] Ms Ervin testified she first knew BCGEU had sued Mr. Jandu when Mr. Demand told her in the Monday conversation that he was going to hire Mr. Jandu. She recalls that when she asked Mr. Demand why he would hire someone who had been involved in a raid against them he answered he found Mr. Jandu to be honest and "He told me about his lawsuit with BCGEU when I never asked about it." She is certain her recollection is accurate. It was a brief exchange that lasted a minute or so.

[104] She did not ask Mr. Demand what the lawsuit was about then or any time afterwards. It was never again mentioned in any conversation between them. She was not responsible for hiring and assumed Mr. Demand had done his due diligence before hiring Mr. Jandu.

[105] Mr. Demand spoke to Mr. Klainbaum, who recalls being told that Mr. Jandu had participated in the GM Place raid on behalf of BCGEU, but Mr. Demand was impressed with Mr. Jandu who left BCGEU after some interpersonal conflict.

[106] Before hiring Mr. Jandu, Mr. Demand wanted to speak to Organizer Louie Guevarra. He was concerned how she would react because she had lived through the GM Place raid.

[107] Mr. Augustino testified the hiring of Mr. Jandu was discussed at two or more weekly Leads meetings. The main concern was that Mr. Jandu had worked at BCGEU and participated in the GM Place raid several years ago, a fact shared by Mr. Demand. He testified there was no discussion during weekly meetings or otherwise about a BCGEU lawsuit against Mr. Jandu. He learned about it from employer counsel a week before he testified. Had he known in 2013, he would have spoken against hiring Mr. Jandu as a member of the organizing team.

[108] Mr. Jandu was hired and reported to work Friday, October 18, 2013. While Mr. Demand told Ms Ervin that Mr. Jandu would be coming to the union that day, there was no evidence of any communication between Messrs Demand and Jandu after the interview. Mr. Jandu met Ms Ervin and completed a single page form with personal information for his personnel file. This is the only document ever placed in his file.

[109] In their conversation, Mr. Jandu asked if she knew his drug dependent co-worker, who he told her was now living on the Downtown East Side. She knew the co-worker from a class she had facilitated. She recalls Mr. Jandu explained he had not reported the co-worker's drug use to BCGEU and that he left BCGEU. He said something about not being able to go back to BCGEU for three months and then deciding to organize for SEIU.

[110] Mr. Jandu recalls he told Ms Ervin that BCGEU was still after him after he went with SEIU and BCGEU sued him accusing him of having taken something.

[111] Ms Ervin testified that, in their conversation on October 18, 2013, Mr. Jandu said he had organized a unit for SEIU that was on BCGEU's target list and BCGEU sued him for taking a confidential list. She asked him what happened and he said it was dismissed. She asked him if he had taken the list and he said he had not. He had reconstructed it. She did not see the BCGEU confidentiality agreement before she testified and did not know this was the subject of the civil claim. Mr. Jandu testified he did not tell Ms Ervin that the lawsuit involved a breach of a confidentiality agreement because it did not seem important and he had moved on to his second union job.

[112] Ms Ervin recalls Mr. Demand reported the hiring of Mr. Jandu to the Executive Board. There was no mention of a lawsuit.

[113] She testified she spoke about Mr. Jandu and his background to Vice-President Lorri Dyer in November or December after an area stewards conference call in which Mr. Jandu participated. Ms Dyer asked her who Mr. Jandu was. Ms Ervin recalls telling Ms Dyer that Mr. Jandu worked for BCGEU, where Ms Dyer's husband worked, and then for SEIU. She said he was accused of something, but the case was dismissed. Ms Dyer did not testify.

[114] Ms Ervin recalls telling Mr. Worhaug that Mr. Jandu was from BCGEU and had participated in the GM Place raid.

[115] She did not speak to Mr. Klainbaum or the Leads and Organizers who interact infrequently with her. She testified, even if Mr. Demand knew about the lawsuit when he hired Mr. Jandu, she would not be surprised they were not told about it.

##### **5. Mr. Jandu's Assignments, Leaves and Conflict with Mr. Demand**

[116] Mr. Klainbaum testified Mr. Jandu and Christopher Sano worked more directly with Mr. Demand on contract enforcement than other Organizers. He worked with the other Organizers, who did less servicing. Although Mr. Jandu was identified as Staff Representative on his business card and the contact page of the employer's website and Mr. Sano and others were identified as Organizer on the contact page, there was no significant difference in their duties.

[117] Mr. Demand testified Mr. Jandu could work independently in collective bargaining and grievance handling. He had good technical skills and strong opinions, but was not as inclusive of members in dealings with employers as Mr. Demand wished.

[118] Mr. Jandu recalls that in his first year he conducted negotiations for five or six collective agreements; prepared or conducted four or five grievance arbitrations; and successfully organized one non-union group of employees. He was unhappy with his salary under the collective agreement.

[119] Unifor National Representative Gavin Davies first met Mr. Jandu in July 2014. Mr. Jandu joined the Unifor Local 467 collective bargaining committee in September 2014. The collective agreement between Unifor Local 467 and the employer was renewed for the term September 1, 2012 to August 31, 2016. The Memorandum of Settlement includes the following:

The Union and Employer agree to a salary adjustment effective September 1, 2014, of Larry Jandu's wage to \$50,000 per year. Further the Parties agree to non-binding mediation as a means of settling the outstanding Unifor proposal on a wage adjustment for Larry Jandu. The parties agree to proceed to mediation within 90 days of ratification to consider the question of increasing the amount of the adjustment to a maximum of \$60,000 per year.

[120] The union alleged and the employer denied Mr. Demand's tone in collective bargaining changed for the worse after Mr. Jandu joined the committee.

[121] Mr. Demand testified he had growing reservations about Mr. Jandu's future with the employer. In mid-December 2014, before Mr. Jandu took a leave to travel to India, he spoke to Mr. Jandu about their future relationship.

[122] The union alleges Mr. Demand's demeanour toward Mr. Jandu away from the collective bargaining table changed. Mr. Jandu took medical leave beginning February 25, 2015. The union filed a harassment and inappropriate workplace behaviour grievance on March 6, 2015. At an unspecified time, Mr. Jandu filed an unsafe workplace complaint with WorkSafeBC.

[123] There are differing accounts in the union and employer's statements of particulars in this arbitration of interactions between Mr. Demand and Mr. Jandu on September 17 and 24; October 30; December 15, 2014; and February 11 and 18, 2015. Evidence about these events was ruled inadmissible because the grievance was settled.<sup>25</sup>

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<sup>25</sup> *UNITE HERE, Local 40 (Larry Jandu)* [2016] B.C.C.A.A.A. No. 73 (Dorsey)

[124] Mr. Demand testified that at a March 19, 2015 meeting with Messrs Davies and Jandu held to air differences and move forward, Mr. Jandu spoke about the stress he was experiencing at work, in part, because of the tension between Mr. Demand and Ms Ervin, who often spoke negatively about Mr. Demand. Mr. Davies does not recall this complaint from Mr. Jandu, who also did not recall complaining about Ms Ervin. Mr. Jandu testified she “never complained about anybody.”

[125] When Mr. Jandu returned to work March 23<sup>rd</sup> there were changes in his responsibilities. Mr. Demand testified that before Mr. Jandu left for India, he told Mr. Jandu that all field staff would be expected to spend 4 hours a week – 2 in the morning and 2 in the afternoon – collectively talking to unrepresented employees. This was to be done as a team and might consume five or six hours per week with travel time.

[126] On March 26<sup>th</sup>, Mr. Jandu resumed medical leave. His return was delayed by a heart attack. His physician cleared him to return to work on November 18, 2015.

## **6. Mr. Jandu Suspended Because of BCGEU Lawsuit Allegations (April 2015)**

[127] On a date after March 26<sup>th</sup>, Mr. Sano told Mr. Klainbaum that he had heard at a social event from a BCGEU employee about a lawsuit against Mr. Jandu. Mr. Klainbaum told Mr. Demand. He telephoned BCGEU Treasurer Paul Finch, who would not discuss confidential BCGEU business or protected privacy information about Mr. Jandu. Mr. Finch did not testify.

[128] Mr. Demand turned to counsel who obtained some of the public documents in the lawsuit on April 9<sup>th</sup>. The Notice of Civil Claim includes the following:

### **BCGEU’s opportunity to organize Family Services**

1.12 In or about August and September 2010, BCGEU assigned Mr. Jandu to organize employees of Family Services of Greater Vancouver - Youth Detox ("Family Services"), who were not unionized at that time, to become members of and be represented by BCGEU.

1.13 For purposes of employees of Family Services being organized as a bargaining unit to be represented by BCGEU, BCGEU provided or made available to Mr. Jandu confidential information or alternatively Mr. Jandu acquired confidential information on behalf of BCGEU, which information was not available to the general public and which was imparted or acquired in confidence, including without limitation information relating to organizing contacts and leads within the Family Services workforce, and specifically including details as to which employees in Family Services were receptive to being organized and who would support Family Services being organized (the “Organizing Information”).

- 1.14 The Organizing Information consisted of information not known to the general public.
- 1.15 Mr. Jandu's employment with BCGEU ended on December 31, 2010. At that time, BCGEU had not yet become the certified bargaining agent for Family Services.

**Mr. Jandu's unauthorized use of confidential information for SEIU**

- 1.16 In or about June 2011, Mr. Jandu became or was about to become an employee of SEIU, the particulars of which are not known to BCGEU, but which are known to Mr. Jandu and SEIU.
- 1.17 On or about August 9, 2011, BCGEU sent Mr. Jandu a letter reminding him of his continuing obligations under the Confidentiality Agreement.
- 1.18 In or about the summer or fall of 2011, Mr. Jandu conducted a campaign for SEIU to organize Family Services, as directed by SEIU or otherwise within the scope of his employment with SEIU. Notwithstanding his duties to BCGEU under, *inter alia*, the Confidentiality Agreement of which SEIU had actual or constructive knowledge, Mr. Jandu used the Organizing Information as a 'springboard' or 'head-start' for the benefit of SEIU to conduct SEIU's campaign, without authorization by BCGEU, the particulars of which campaign are not known to BCGEU but which are known to Mr. Jandu and SEIU.

[129] Mr. Demand testified his first reaction on seeing this was that he did not want Local 40 at risk of a raid or having any membership information shared outside the union. Employers and members would be infuriated.

[130] He took decisive action on April 15<sup>th</sup> including changing the locks of the union premises. He did not discuss his actions with Ms Ervin, who was at meetings away from the office on April 15<sup>th</sup>. He telephoned and told her she needed to come to the office before the end of the day. He held separate meetings with clerical and field service staff explaining there were allegations he was investigating that required the locks to be changed.

[131] That day, Mr. Demand sent similar letters to Mr. Jandu and Mr. Davies. The letter to Mr. Jandu states:

You will find attached the following BC Supreme Court filings relating to your case. These pleadings were provided to us on April 9, 2015 by our legal counsel from public records which we only became aware of in the past week.

They include a civil claim against yourself and SEIU Local 1, dated October 14, 2011; an application for substituted service, dated October 31, 2011; your and SEIU Local 1's response denying the allegations, dated November 19, 2011; an application for production of documents, dated October 15, 2012; and a consent dismissal order, dated September 16, 2013.

The issues of trust and confidence were raised with you explicitly and in detail during your interview and you were advised that it was of particular concern in your

case because you had been working with two unions - the SEIU and the BCGEU - who in the past had engaged in raiding Local 40 certifications. Despite this you failed to disclose the fact that you and the SEIU had recently been defendants in a civil claim filed by BCGEU, which accused you of violating your written commitment to treat certain information as confidential. The allegation is that you used confidential employee contact information obtained when you were organizing on behalf of BCGEU to successfully organize that same unit for SEIU Local 1 after he had completed your term of employment with the BCGEU.

We acknowledge that he has [you have] denied these allegations in his [your] response to the claim. But given the gravity of the allegations, and given the centrality of the allegations to the duties he was [you were] to be required to perform with Local 40, he [you] had an obligation to disclose the dispute and to offer whatever explanations you could to Local 40 before the decision was made to hire you.

At this preliminary stage of our investigation, these omissions appear to constitute serious omissions of key details in your job application. We wish to meet with you and offer you an opportunity to explain them. I am available this Friday morning, April 17th to meet. Please let me know if this date works.

In the meantime because of the gravity of these allegations, we have barred your access to any Local 40 premises, to any Local 40 certified units, and remote access to Local 40 computers. We request you immediately return the union office keys, the parking fob, parking pass, and Union laptop.

We are mindful of the fact that you are on sick leave and absent from work, but we consider these matters to be of such urgency that they require us to adopt this course of action.

[132] When Ms Ervin returned to the office, she did not say to Mr. Demand she believed Mr. Jandu had told him about the lawsuit during the September 2013 interview because Mr. Demand had spoken to her about it the following Monday morning.

[133] She returned a call from Mr. Jandu, upset about the letter he received. She told Mr. Jandu that Mr. Demand knew about the lawsuit and she knew about it. Mr. Jandu testified he telephoned Ms Ervin on April 15<sup>th</sup> and told her that Mr. Demand wanted to know about the lawsuit, which he had told Mr. Demand about during the interview. He testified she replied Mr. Demand had “talked to me about these things when you got hired.” The evidence did not address whether they spoke before or after she returned to the union office.

[134] Mr. Demand denies he knew about the lawsuit before March 2015 and believes Ms Ervin is simply mistaken in her recall. He could not have spoken to her about something he did not know.

[135] Mr. Demand testified he first spoke to Ms Ervin about the BCGEU lawsuit against Mr. Jandu in April 2015 after he heard the rumor from Mr. Klainbaum. He had looked

into it and the rumor appeared to be true. He testified he spoke to her because it appeared that she and Mr. Jandu were confidantes who worked closely on some issues. Ms Ervin was not asked about this during her testimony. Mr. Jandu testified he only went to Ms Ervin when he had questions about collective bargaining or arbitrations.

[136] Mr. Jandu reported his April 15<sup>th</sup> conversation with Ms Ervin to Mr. Davies. On April 16<sup>th</sup>, Mr. Davies telephoned Ms Ervin and asked her if she knew about the lawsuit. She said she did.

[137] Mr. Davies' April 21<sup>st</sup> reply to Mr. Demand, with a copy to Ms Ervin, was shaped and informed by what he was told by Mr. Jandu and Ms Ervin. He did not disclose he had spoken to Ms Ervin or what she told him. He wrote about the reason for and outcome of the March 19<sup>th</sup> meeting and what happened on Mr. Jandu's return to work. He wrote further:

The workplace harassment and bullying of Brother Jandu did not stop with these actions. Last week a meeting was held in your office and members were told that Brother Jandu had been caught stealing personal contact lists and as such was under investigation for theft. Locks were changed on all doors and members were told that they were to have no contact with Brother Jandu. You also requested a return of keys, the parking pass and Unite Here's lap top computer. The letter that was issued to Brother Jandu insinuates that he had not disclosed allegations from 2011 to the Employer during the interview process and that in its view it is a serious breach of trust. We are of the opinion that this was disclosed to the Employer during the interview process and that they were more than aware of the proceedings that were filed against Brother Jandu. We also maintain that the Employer was aware that the proceedings were dismissed in September of 2013. For the Employer to conduct a meeting, change all the locks in the office and to disclose to Brother Jandu's co-workers that he had been charged with theft has done immeasurable damage.

[138] Mr. Davies suggested a third-party investigation, but the divergent narrative trajectories were set. The employer was looking for an explanation from Mr. Jandu about the lawsuit allegations. The union was convinced Mr. Demand was on a campaign against Mr. Jandu and willfully invoking events before Mr. Jandu's employment about which he had been told during the interview.

[139] Ms Ervin was a silent spectator, who, unknown to Mr. Demand, was corroborating Mr. Jandu, who, unknown to her, had complained to Mr. Demand on March 19<sup>th</sup> about being upset by her negativity toward Mr. Demand. She had not heard about this until she was cross-examined. She testified she did not complain frequently and, when she did, it was only about servicing issues.

[140] Mr. Demand replied April 28<sup>th</sup>, in part, as follows:

My recollection of our meeting with Larry Jandu differs significantly from the version set out in your letter. However there does not appear to be much purpose in having a protracted exchange over that issue at this point in time, although our differences may arise again in the near future depending on how this matter unfolds.

The allegations in the pleadings by the BCGEU go to the very heart of the employment relationship at issue. The ability to trust our employees in these matters is vitally important. We took the pleadings very seriously for a number of reasons. The BCGEU is an established, credible and responsible trade union. It would not have leveled these potentially career-ending accusations lightly. Nor would it have spent scarce resources on protracted BC Supreme Court litigation using outside legal counsel without good grounds. Finally, I was not impressed with the denials of the allegations filed on behalf of Larry.

If Larry had disclosed this information to me during the hiring interview, and had he not provided a satisfactory explanation, and agreed to waive his privacy rights so that I might speak with the BCGEU to confirm what he told me, I would not have considered hiring him.

At the moment, we have some very serious unanswered allegations that go to the core issue of our ability to trust Larry. On legal advice we took the minimum necessary steps to protect confidential and private information that might otherwise be accessible to Larry until the matter had been fully investigated'

It is incorrect to suggest that his coworkers were informed that he had been charged with theft. That is simply not so. As a matter of common sense we were required to inform our staff as to the reasons why we were changing the locks to the office. They were told the minimum possible, and were told nothing beyond what was publicly available in the pleadings. ...

I would like Larry to provide an explanation for the very serious allegations made by his former employer, the BCGEU, as to his breach of trust. I would also ask that he provide written limited waiver of privacy rights with respect to that lawsuit and his employment with BCGEU so that we might be able to confirm his explanation.

[141] The employer had broadened its request to include a means to “confirm his explanation” with BCGEU. Mr. Demand testified the goal was to determine if the allegations were factual. If not, then the matter would be put behind everyone. He was unwilling to accept Mr. Jandu’s account. He wanted to check it against what he could learn from BCGEU and make a judgment. This is what he intended by having Mr. Jandu’s account confirmed. He wanted a privacy waiver because he was unable to learn anything from Mr. Finch.

[142] Mr. Jandu testified he was on medical leave and advised not to provide an explanation at that time. He testified he refused to provide a waiver of privacy rights for BCGEU at that time or any time later on the advice of counsel. He also felt he was

being pressured by the employer and, unless BCGEU gave him a “glorious reference”, which he assumed it would not, Mr. Demand, who had another agenda, would not fairly evaluate any information BCGEU provided.

[143] At the time, Mr. Davies and union counsel did not know the contents of BCGEU’s litigation file or Mr. Jandu’s personnel file. Mr. Jandu knew his lengthy statement of November 28, 2010 to the Directors was likely in his personnel file.

## **7. Resolution Efforts and Without Prejudice Meeting (September 11, 2015)**

[144] Union counsel wrote Mr. Demand on June 23, 2015. Employer counsel replied June 28<sup>th</sup>, in part:

The solution to the present impasse is simple and readily at hand. Mr. Jandu, accompanied by yourself, if desired, will provide Mr. Demand with an explanation for the very serious allegations set out in the pleadings and why it was not disclosed at the time of the interview.

Mr. Jandu will also agree to a limited waiver of any privacy rights with respect to the subject matter of the lawsuit so that his explanation can be verified by the BCGEU. It goes without saying that we agree to have you and Mr. Jandu present when we speak to the BCGEU to verify his explanation.

If the explanation above is provided and is satisfactory, and is verified by the BCGEU, we will agree to distribute a mutually agreeable letter to other members of the staff of Local 40 explaining these events in a way that vindicates Mr. Jandu. We will also agree to negotiate a graduated return to work for him.

[145] For the union, having Mr. Jandu’s explanation “verified” was seen to be even less favorable than having it “confirmed.” If BCGEU did not agree entirely with Mr. Jandu’s explanation, then Mr. Jandu likely faced dismissal. The focus was shifting from whether the fact of a lawsuit had been disclosed during the interview to the merits of the allegations in the lawsuit. The union was not going to place Mr. Jandu in that jeopardy.

[146] Two months later, it was agreed to have an off-the-record, without prejudice meeting at which Mr. Jandu would speak with Mr. Demand. The meeting, held September 11<sup>th</sup>, was attended by Messrs. Demand, Jandu and Davies and counsel. By agreement, evidence of what Mr. Jandu said at the meeting was admitted.

[147] Mr. Jandu explained BCGEU was “pissed” that no one had come forward about co-worker drug use and he was told in October 2010 that he would be away from the organizing department for 9 months. That period was extended. The SEIU posting came up and he successfully applied. While at SEIU he received a call from someone at Family Services and he explained the circumstances to Mr. Hulme, who asked him to

build a contact list. He built a list from scratch and obtained a certification for SEIU. His explanation lasted ten to fifteen minutes in the approximately one-hour meeting.

[148] Mr. Demand, who does not perceive Mr. Jandu to be as compliant as he says in not waiving privacy rights because of advice from counsel, heard Mr. Jandu repeat the account of co-worker drug use; that he did no wrong, but was punished; and did no wrong in organizing the employees for SEIU. But there were no documents that could corroborate what he said.

[149] Mr. Davies was impressed Mr. Jandu was being genuine in his explanation, but the employer wanted an opportunity to speak to BCGEU about his account. The union assessed there was minimal chance BCGEU would support Mr. Jandu's explanation and Mr. Jandu would be dismissed. In effect, it was a rigged game with the outcome predetermined by the employer. The employer's goal was not legitimately to hear Mr. Jandu's explanation and learn the truth, but to pursue disingenuous requests to further frustrate Mr. Jandu's return to work and engage in further character assassination. The union did not agree the employer could discuss the lawsuit with BCGEU.

[150] The union did not disclose Ms Ervin had corroborated Mr. Jandu's assertion that he told Mr. Demand two years earlier at the September 2013 interview that there had been a lawsuit against him by BCGEU. Ms Ervin was not told about this settlement effort. Mr. Jandu continued on medical leave.

[151] Medical approval for Mr. Jandu to return to work was communicated to the employer in a letter dated December 1, 2015. The referral to arbitration was on April 6, 2016.

#### **8. Employer Access to Mr. Jandu's BCGEU Personnel File (May 2016)**

[152] At the employer's request, on April 22, 2016, I issued a summons to Dan Cahill, BCGEU Director of Advocacy to appear at a hearing scheduled for May 9<sup>th</sup> and to bring "all documents relating to Larry Jandu's departure from the BCGEU, and all documents relating to the litigation in BC Supreme Court Action No. 3-116721, Vancouver Registry between BCGEU, Plaintiff, and Larry Jandu and SEIU Local 1 Canada, Defendants, including any confidential settlement."

[153] By May 9<sup>th</sup>, the employer had obtained the documents available from BCGEU, including the terms of the confidential settlement in the release Mr. Vipond signed July

23, 2013 and transcripts of the July 19 and 20, 2012 examinations for discovery of Messrs Jandu and Hulme.

[154] Mr. Demand testified he learned Mr. Jandu had been a temporary, not permanent, employee and there was more to the termination of his employment with BCGEU than he had been led to believe by Mr. Jandu. On cross-examination, Mr. Jandu testified he had told Mr. Demand that he was employed from 2005 to 2010. He did not say he was a permanent employee or that he was on a series of temporary term contracts.

[155] Mr. Demand learned there was no principled departure, but grounds for numerous allegations of misconduct. On cross-examination, Mr. Jandu testified he made a decision to resign based on principle, but BCGEU decided not to renew his contract because of misconduct.

[156] For Mr. Demand, if Mr. Jandu recognized he had a duty of utmost candour, it was not fulfilled in his disclosures during their interview or afterwards in the efforts to have him explain the lawsuit and provide a privacy waiver necessary to speak to BCGEU. By the time of the hearing, Mr. Demand was no longer willing to have Mr. Jandu return to work. If the suspension is upheld, it is his intention to dismiss Mr. Jandu.

[157] Not all the BCGEU documents had been previously available to Mr. Davies. When they were, he learned about the circumstances surrounding the termination of Mr. Jandu's employment with BCGEU and that Mr. Jandu's account to Mr. Davies was more favorable to himself than the documents revealed.

[158] Mr. Davies did not know about the confidentiality agreement or the terms of the settlement and release which he understood to be confidential. He did not know the release bound BCGEU not to divulge the fact or terms of settlement, but did not contain the same promise by Mr. Jandu or SEIU.

[159] Mr. Davies was not aware that any telephone call by Mr. Demand to Mr. Hall, Mr. Jandu's reference at BCGEU, would not provide lawsuit related information because the release signed by BCGEU states, in part: "...the Plaintiff represents, warrants, acknowledges and agrees not to divulge in any way, either directly or indirectly, the fact or the terms of this settlement or the negotiations leading thereto with anyone except as required by a Court of competence jurisdiction or the written consent of the Defendants."

## 9. Disclosure of Third Party Corroboration of Lawsuit Knowledge (June 2016)

[160] While the employer was seeking a privacy waiver in 2015 to determine whether Mr. Jandu breached a confidentiality agreement, the only issue for the union was whether Mr. Jandu had disclosed the lawsuit during his interview. On December 1, 2015, union counsel wrote employer counsel, in part:

We write further to our meeting of September 11, 2015 and to your e-mail of November 20, 2015. ...

As previously stated at our meeting of September 11 and in our letter of June 23, the Employer is incorrect to suggest Mr. Jandu lied about or concealed the existence of the lawsuit the BCGEU brought against himself and the SEIU. While Mr. Jandu and Mr. Demand clearly have different recollections of the interview, our position remains 1) Mr. Jandu specifically raised the lawsuit; 2) Mr. Demand determined, at that time, not to ask further questions on the subject; and 3) Mr. Demand chose not to speak to any of Mr. Jandu's references, all of whom had knowledge of the lawsuit.

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.** (Emphasis added)

While we accept Mr. Demand may have subsequently forgotten about the lawsuit, it does change Mr. Jandu's complete transparency at the time he was being interviewed. Any allegation he was anything but transparent is completely without merit.

With respect to the first issue listed above, the Employer's demands for a limited privacy waiver do nothing to assist in determining what occurred during the interview process. Accordingly, while Mr. Jandu has offered you his account of what happened, he will not be providing a limited privacy waiver. ...

Finally, we attach a letter from Mr. Jandu's doctor, clearing him to return to work on a graduated basis. We expect Mr. Jandu will be immediately returned to his position with the Employer.

[161] On December 3<sup>rd</sup>, employer counsel asked for the identity of the third party. On December 9<sup>th</sup>, he asked for particulars and any supporting documents.

[162] Ms Ervin was unaware of developments in Mr. Jandu's suspension as they unfolded. She did not tell Mr. Demand about her recollection of their brief conversation when he told her he was going to hire Mr. Jandu; her conversation with Mr. Jandu when he reported to work on October 18, 2013; or her conversation with Mr. Jandu on April 15, 2015. She testified she did not because Mr. Demand did not ask.

[163] The union's particulars of May 2, 2016 did not identify the third party. In May 2016, employer counsel interviewed Ms Ervin. He did not ask and she did not volunteer

she was the person the union had spoken to and relied on to corroborate “the fact Mr. Demand was aware of the lawsuit at the time he hired Mr. Jandu.” She did not volunteer about her conversations with Mr. Jandu on October 18, 2013 or April 15, 2015. She hoped the dispute would be resolved and she could remain anonymous.

[164] I ordered disclosure of the identity of the third party on June 2, 2016 as follows:

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 that 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
  - (a) refuse to employ or refuse to continue to employ a person,
  - (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.<sup>26</sup>

[165] The particulars the union provided on June 8, 2016 were:

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<sup>26</sup> Letter Decision, June 2, 2016 (unreported) (pre-hearing provision of particulars)

Ms. Shelly Ervin is the Secretary Treasurer of Unite Here, Local 40. Sometime in mid to late September 2013, Ms. Ervin had a conversation with Mr. Demand at the Local 40 office. They were the only two people present. Mr. Demand advised Ms. Ervin he intended to hire Mr. Jandu. When Ms. Ervin raised concerns about this decision, Mr. Demand advised that Mr. Jandu had disclosed the existence of the BCGEU lawsuit during the interview.

[166] The employer first learned about the October 18, 2013 and April 15, 2015 conversations between Mr. Jandu and Ms Ervin during Mr. Jandu's testimony after the employer had presented its evidence. Ms Ervin, summonsed to testify, was called as the union's last witness.

[167] Mr. Demand testified in rebuttal that he had suspected Ms Ervin was the third-party witness, but he did not speak to her about his suspicions before or after June 8<sup>th</sup>.

## **10. Summary of Employer and Union Submissions**

[168] The employer submits it cannot trust Mr. Jandu. His behaviour in 2010 while employed by BCGEU and during his employment with SEIU is the antithesis of principled or trust-instilling conduct. Since then, he failed to disclose the BCGEU lawsuit at his interview; he lied and misrepresented the circumstances of his separation from BCGEU; and he engaged in protracted refusal to provide information on contrived grounds of protecting privacy when it was to shield himself.

The information requested went to a matter of fundamental trust, relating to Mr. Jandu's honesty and integrity. The information was vital to the protection of the privacy of Local 40's members' personal information, such as their SIN numbers. It was also vital to the protection of the organizational interests of Local 40.<sup>27</sup>

The employer submits this is cause for the initial and ongoing suspension. Mr. Jandu's conduct has made the employment relationship completely irreparable.

[169] The employer acknowledges assessment of credibility is central to this dispute. It submits credibility assessment is an analysis of differing versions of events based on "the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."<sup>28</sup> Each version of events is to be assessed against what is the "likely course of events that would have transpired given the circumstances and individuals involved."<sup>29</sup>

<sup>27</sup> Final Argument of UNITE HERE, Local 40, p. 2

<sup>28</sup> *Faryna v. Chorny*, [1951] B.C.J. No. 152, ¶ 11

<sup>29</sup> *British Columbia Institute of Technology (Chrunik Grievance)*, [2005] B.C.C.A.A.A. No. 98 (Moore), ¶ 45

From the adjudicator's perspective, what is needed is evidence of the context in which the event occurred. Where did the event occur - what was the detailed setting for the event? When did the event occur? If the event was part of a lengthier interaction between the two witnesses, then what were the protagonists doing before the alleged event occurred? Who were the protagonists and what relationship, if any, did they have with one another? Why would this alleged event have occurred - what does the evidence reveal about motivation? In common parlance, this body of evidence might be described as the "who, what, where, when, how and why of the story."<sup>30</sup>

[170] The employer submits honesty is the "touchstone" of a viable employment relationship and a critical element for an employee in a position of trust.<sup>31</sup> A false statement or omission at the time of application for employment can be just cause for dismissal. The factors to be considered include:

- (1) The nature and character of the falsification and the matter or offence concealed.
- (2) The number of matters concealed.
- (3) The date when the falsified or concealed matter occurred in relation to the signing of the employment application.
- (4) Any warnings contained on the employment application.
- (5) Whether the revelation of the matter or offence concealed would have resulted in the employer not hiring the individual.
- (6) The time that has elapsed between the signing of the false application form and the date of discovery.
- (7) Whether the employer acted promptly upon learning of the falsification of the employment record.
- (8) The seniority of the grievor.
- (9) Whether the grievor was in fact discharged for the falsification.
- (10) The materiality of that falsification or matter or offence concealed to the work performed.
- (11) Special considerations such as a sensitive employment position.<sup>32</sup>

A false statement at time of application for employment can relate to past employment.<sup>33</sup> Failure to disclose information about past employment, especially when there is a lack of forthrightness during an employer investigation after hiring, can be cause for dismissal.<sup>34</sup>

<sup>30</sup> *FortisBC Energy Inc. (Komant Grievance)*, [2011] B.C.C.A.A.A. No. 145 (McConchie), ¶ 335

<sup>31</sup> *Phillips Cables Ltd.* (1964), 6 L.A.C. (2d) 35 (Adams); *Central Okanagan Regional District (Windels Grievance)*, (2003) 117 L.A.C. (4th) 20 (Chertkow); *Shaw Cablesystems G.P. (Campbell Grievance)*, [2014] C.L.A.D. No. 147 (Hall), ¶ 102 - 103

<sup>32</sup> *Gould Manufacturing of Canada Ltd. (Esseltine Grievance)*, [1972] O.L.A.A. No. 4 (Shime), ¶ 10

<sup>33</sup> *Weyerhaeuser Co. (Bhatia Grievance)*, [2002] B.C.C.A.A.A. No. 416 (McPhillips)

<sup>34</sup> *The City of Edmonton (Sagstuen Grievance)*, [2007] A.G.A.A. No. 68 (Casey)

[171] The employer submits “Suspicious circumstances require an explanation.”<sup>35</sup> “In the absence of full co-operation, the employer can reasonably conclude that the employee does not have anything to contradict what the employer has learned.”<sup>36</sup> Further, “The failure to provide an adequate explanation to allegations of dishonesty can be fatal to the employee’s credibility and the viability of the employment relationship.”<sup>37</sup>

[172] The employer submits Mr. Jandu was required to provide an explanation about circumstances that gave rise to suspicions about his trustworthiness. His explanation lacks credibility and is no better than not giving an explanation. His failure to cooperate and provide a complete explanation reinforced the employer’s suspicions and is itself an obstacle to maintaining the employment relationship.<sup>38</sup> Mr. Jandu:

- Failed to disclose to Mr. Demand during the September 2013 interview that he was being sued or had been sued by BCGEU for breach of confidentiality;
- Misrepresented the nature of his employment with BCGEU – as a permanent continuing employee rather than being on a series of five one-year appointments;
- Misrepresented the circumstances under which he left BCGEU, stating that he left on a point of principle rather than the fact that BCGEU refused to re-employ him because of serious allegations of misconduct; and
- Failed to provide information reasonably requested by his employer.

[173] The employer submits Mr. Jandu behaved, as Ms Rowles correctly assessed, with a lack of professional conduct and credibility and flawed personal judgment. At BCGEU, he enabled a co-worker’s drug dependency and allegedly borrowed from this co-worker to buy what he finally admitted he thought was stolen property. However, his recurring characterization is that he was on a mission of mercy with his co-worker and what happened was “an unfortunate incident” for which BCGEU punished him.

[174] The employer submits Mr. Jandu failed at the interview, when a new relationship was being formed, to disclose the most recent significant event in his life which involved unions about which Mr. Demand spoke and the central concern in the employer’s

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<sup>35</sup> *District of Coquitlam* [1977] B.C.C.A.A.A. No. 2 (Larson), ¶ 22

<sup>36</sup> *VHA Home Health Care (M.T. Grievance)*, [2013] OLAA No. 393 (Cummings), ¶ 77

<sup>37</sup> Final Argument of UNITE HERE, Local 40, p. 7

<sup>38</sup> *MVT Canadian Bus Inc. (Lebrun Grievance)*, [2014] B.C.C.A.A.A. No. 169 (Sullivan), ¶ 77

relationship with them, namely raiding activity, and Mr. Jandu's trustworthiness to respect confidential information.

[175] It is inherently improbable, in light of Mr. Jandu's recent employment history, that Mr. Demand would not make any comment or inquiry if he had been told BCGEU had sued Mr. Jandu. This is confirmed by the action he took when he did learn.

[176] It is also inherently improbable that Mr. Demand would tell Ms Ervin there had been a lawsuit and not tell Mr. Klainbaum, the Leads or anyone else.

[177] Mr. Jandu volunteered about participating in the GM Place raid, an open and known fact, but concealed the lawsuit, which was not openly known. While being candid and transparent about what happened in 2007, Mr. Jandu deflected Mr. Demand from more recent events and the lawsuit.

[178] The employer submits this is the behaviour of a con artist or trickster. Mr. Jandu was deflecting Mr. Demand from his inquiry why Mr. Jandu would leave a union like BCGEU, work for SEIU and now want to work for a third union and why he should trust Mr. Jandu who had raided the union with which Mr. Demand had spent his adult life. Mr. Jandu knew or could intuit if he revealed the lawsuit he would not be hired.

[179] The employer submits the same behaviour happened in this proceeding. Mr. Jandu did not disclose all the facts to Mr. Davies and, despite an order, did not disclose his April 16, 2015 conversation with Ms Ervin until he testified. He repeatedly seeks to whitewash his role and evoke sympathy. He complains about Ms Ervin to Mr. Demand, but does not remember he did. Then he says she never complains. He says his three references would have told Mr. Demand about the lawsuit, but Mr. Hall was prevented by the release from speaking about it. There is no objective evidence the third reference knew or that Mr. Hulme would tell Mr. Demand if he had spoken to Mr. Hulme. Mr. Jandu says he is transparent, but blames union counsel for refusing to give the employer access to information from BCGEU that he did not disclose to Mr. Davies. No one is spared from his half-truths.

[180] The employer submits Mr. Demand would not take the risk of hiring Mr. Jandu if he knew Mr. Jandu had been sued for breach of a confidentiality agreement involving member and employee information after speaking about trust and inter-union relations in the interview.

[181] The employer submits Ms Ervin was simply mistaken. She has conflated or substituted “BCGEU lawsuit” for “BCGEU raid” in her recollection of what Mr. Demand said. It is improbable that she would be upset about the 2007 raid, but not about a breach of confidence lawsuit resolved in 2013 and that she would speak to other union officers about the raid, but not the lawsuit. She was not and did not tell anyone about the lawsuit because Mr. Demand did not know and did not mention a lawsuit to her.

[182] It is improbable, the employer submits, that Mr. Jandu would disclose the lawsuit during the interview and then refuse information in response to at least nine requests since April 2015. The only inference is that he was trying to hide something he had not disclosed.

[183] Only with a summons did the employer learn Mr. Jandu had not left BCGEU as a matter of principle or for reasons related to his integrity or anything related to seniority. It is a recurring theme, the employer submits, that Mr. Jandu cloaks himself in an aura of goodness, kindness, and human concern, when his behaviour is for his self-interest. The refusals to allow the employer access to BCGEU was using a cloak of misplaced privacy to maintain an opaque story of half-truths. Yet, despite Mr. Jandu’s refusal to provide an explanation and mounting suspicion he was hiding something, which proved to be true, the employer maintained Mr. Jandu on benefits and as an employee.

[184] The employer submits there was cause to suspended and to continue to suspend Mr. Jandu. He will be dismissed when this proceeding concludes.

[185] The union submits Mr. Jandu disclosed the existence of the lawsuit at the interview and was not dishonest about the circumstances surrounding his departure from BCGEU. The employer demand for an explanation and privacy waiver was unreasonable. The suspension or holding out of service was unreasonable. Mr. Jandu should be returned to work and compensated.

Even if the Employer were correct about Mr. Jandu not raising the BCGEU lawsuit at the time of the interview, which we strenuously deny, the Employer would not be justified in holding Mr. Jandu out of service. First, the evidence surrounding the allegation Mr. Demand specifically asked about trust is entirely suspect. Second, any failure to disclose the existence of the lawsuit would have been an act of omission and not of commission. Finally, Mr. Demand cannot now hide behind the allegedly-newfound knowledge of the lawsuit, and the new allegation that Mr. Jandu was dishonest about his departure from the BCGEU, to make up for the fact he utterly failed to take the most basic steps required when hiring a new employee,

especially given that even by his own account, Mr. Jandu gave him cause to be concerned about Mr. Jandu's employment history with the BCGEU.<sup>39</sup>

[186] The union submits the question during the interview was about raiding, not trust, and Mr. Jandu's disclosure about participating in the GM Place raid was responsive. The information and evidence about Mr. Jandu's departure from BCGEU shows a deep displeasure by BCGEU with consequences for Mr. Jandu, but Mr. Demand took no steps in 2013 to inform himself.

[187] The union submits: "Credibility is of central importance to the key aspects of this case and, for various reasons, Mr. Jandu's testimony is to be preferred to Mr. Demand's. In the alternative, it is impossible to ascribe greater credibility to one over the other."<sup>40</sup>

[188] It is illogical, the union submits, to accept Mr. Demand's testimony that Mr. Jandu said he left on a matter of principle and the relationship was without friction when there was an issue involving a co-worker and other circumstances. Similarly, it is illogical that Mr. Jandu would disclose his GM Place raid participation and the circumstances of his departure from BCGEU and not disclose the lawsuit.

[189] The union submits that while Mr. Demand presented as a comfortable and confident witness there were indicators that point to his lack of credibility. There are internal inconsistencies. He was evasive about simple matters, like whether speaking to references is a standard hiring practice. His lack of memory about whether other candidates had prior union experience and errors about the role of some employees of Local 40 are telling.

[190] The union submits:

It is not contentious Mr. Jandu voluntarily raised his involvement in the raid, his former colleague's drug habit, the fact the BCGEU was very upset about Mr. Jandu's failure to report that drug habit, and the fact Mr. Jandu's employment was terminated as a result (either because he quit, as Mr. Demand testifies he was told, or because his contract was not renewed, as Mr. Jandu testified was his explanation at the UNITE Here interview).

Despite this, the Employer maintains the bizarre conclusion Mr. Jandu sought to conceal the history of the lawsuit, which had settled by way of a release, signed July 23, 2013. It remains completely unclear why Mr. Jandu would volunteer so much information that is objectively harmful to one's employment prospects but

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<sup>39</sup> Outline of Union's Legal Argument, ¶ 4

<sup>40</sup> Outline of Union's Legal Argument, ¶ 5

would seek to conceal the existence of a lawsuit that Mr. Jandu understood had been settled for several months.

The Employer now suggests this was to prevent UNITE Here from discovering the full history of Mr. Jandu's last months at the BCGEU. While this is an interesting theory, it has no semblance of credibility as it fails to account for the fact that Mr. Jandu had already alerted Mr. Demand to the fact his professional relationship with the BCGEU had not ended well. While Mr. Jandu was of the belief he would be recalled to the organizing department after a period of time, he has also been quite clear he understood his contract was not renewed in order to punish him.<sup>41</sup>

[191] It is illogical, the union submits, to accept that Mr. Demand asked Mr. Jandu about trusting him when he did not know if any other candidate worked for BCGEU or another union. This is an after-the-fact construct to make a theory fit the arbitral jurisprudence. Mr. Jandu has consistently stated from April 15, 2015 that he told Mr. Demand about the lawsuit during the interview. He did and Mr. Demand's failure to take any steps in 2013 to inquire further is no reason to punish Mr. Jandu. At worst, if Mr. Jandu did not, then it was simply an omission not a misrepresentation or lie.<sup>42</sup> And not every failure to disclose in all circumstances will lead to dismissal.<sup>43</sup>

[192] The union submits Mr. Jandu was forthright during the interview about the end of his employment with BCGEU and provided his "honestly-held understanding of what had occurred."<sup>44</sup> He could not disclose what he did know was being discussed among the Directors, but not communicated to him. Ms Rowles did not tell him and there was no reply to his November 28, 2010 statement. His supervisor, Chris Anderson, was upset his contract was not being renewed.

... Mr. Jandu testified repeatedly and consistently that his immediate supervisor had specifically told him he was being punished for failing to disclose his colleague's drug use. This is what he was advised and this is what he told Mr. Demand.

He cannot be blamed for never having been told the real reason his contract was not renewed. Even his decision not to meet with the BCGEU in February 2011 does not change his honestly-held belief at the time of the interview.

Similarly, Mr. Jandu had an honest and reasonable belief he would be recalled to the BCGEU following a separation period, which would eliminate his seniority.<sup>45</sup>

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<sup>41</sup> Outline of Union's Legal Argument, ¶ 19 - 21

<sup>42</sup> *Health Labour Relations Association of BC (Seignoret Grievance)* [1993] B.C.C.A.A.A. No. 189 (Hickling), ¶ 7- 73; *Coquitlam Library Board* [1997] B.C.C.A.A.A. No. 337 (Hickling), ¶ 84 - 88

<sup>43</sup> *Versacold Group* [1999] O.L.A.A. No. 992 (Davie), ¶ 55 - 61

<sup>44</sup> Outline of Union's Legal Argument, ¶ 36

<sup>45</sup> Outline of Union's Legal Argument, ¶ 39 - 41

[193] The union submits the employer's repeated request for a verifiable explanation was never made in good faith. It was a process setup for Mr. Jandu to fail.

Both Mr. Jandu and Mr. Davies testified they understood the demand to be that Mr. Jandu would provide an explanation to UNITE Here and that if the BCGEU agreed with his explanation, he would be returned to service. As Mr. Davies testified, he questioned why one would expect two parties who had been engaged in a lawsuit might have the same understanding of the relevant events after the fact.

Mr. Demand ludicrously attempted to argue the words "verify" and "confirm" really meant to investigate, weigh the two stories, and make a determination. This was an absurd explanation completely defying credulity.

Rather, Mr. Davies and Mr. Jandu correctly understood the various demands from the Employer and determined not to participate in the process. The Union advised Mr. Jandu had already addressed the matter with Mr. Demand in the interview and insisted he be returned to service.

The Union's suspicion the Employer's offer was never genuine is bolstered by the admission Mr. Demand made that he didn't think Mr. Jandu was a good fit and that he had considered whether there was a means of terminating his employment.

Certainly, the Union and grievor need not participate in a process such as this.<sup>46</sup>

[194] The union submits contacting references is a basic and fundamental element of hiring. "Proper hiring practices include checking references and finding assurances that a person proposed for hire is not a scoundrel or a thief."<sup>47</sup>

While a reasonable employer would make it a regular practice to check references, especially in light of the access to personal information the Employer has stressed throughout these proceedings, it was particularly incumbent upon Mr. Demand in this case.

In this case, there is no dispute Mr. Jandu gave Mr. Demand reason to make further inquiries into his background. Mr. Jandu testifies he advised Mr. Demand his contract was not renewed as a result of his failure to advise the BCGEU of his partner's drug use while Mr. Demand has testified Mr. Jandu stated he quit the BCGEU on a point of principle/integrity to avoid significant discipline and/or the loss of seniority. In either case, a prudent employer would check the potential employee's references or make some sort of inquiry into their background.

Instead, Mr. Demand simply determined to hire Mr. Jandu with knowledge that Mr. Jandu had participated in a raid on UNITE Here and that he had angered the BCGEU while in their employ.<sup>48</sup>

[195] The union submits the employer has failed to meet its onus of establishing Mr. Demand asked Mr. Jandu about issues of trust and that Mr. Jandu failed to disclose the

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<sup>46</sup> Outline of Union's Legal Argument, ¶ 47 - 51

<sup>47</sup> *Absolute Equipment and Vehicle Sales v. British Columbia (Registrar of Motor Dealers)*, [2000] B.C.C.O. No. 9, ¶ 46

<sup>48</sup> Outline of Union's Legal Argument, ¶ 58 - 58

lawsuit. “It is not appropriate for an arbitration board to guess what may have happened; it is essential that there is evidence that establishes on the balance of probabilities what specifically did occur.”<sup>49</sup> Therefore, the union’s claim should be upheld and Mr. Jandu should be returned to work and compensated.

## **11. Discussion, Analysis and Decision**

[196] My role is not to decide whether Mr. Jandu misused confidential BCGEU information while organizing employees on behalf of SEIU. Similarly, it is not my role to determine whether the employer has just and reasonable cause to implement its announced intention to dismiss Mr. Jandu.

[197] The issue over which I have jurisdiction under the submission to arbitration agreement is whether the employer had cause to initially suspend Mr. Jandu and to continue the suspension after Mr. Jandu was able to return to work.

[198] Messrs. Demand and Jandu meet for approximately one hour on a Friday afternoon in September 2013. Mr. Demand was looking to hire a full-time Union Representative/Organizer for which there were several, mostly inexperienced, applicants. Mr. Jandu was looking for a job in a career for which he had left his first career in community social services. He had relevant experience.

[199] Both came to the interview without the usual preparation for such an important meeting. Mr. Jandu did not make a written application. His selection for interview was because of his inquiries through Mr. Klainbaum. He did not bring a resume with references to present. He wrote the names and contact numbers of three references sometime before the meeting ended. Mr. Jandu wanted the job with the only trade union he had cold called, even, it appears, if the pay was less than he wanted.

[200] Mr. Demand had finalized the job posting with listed requirements for a successful applicant, but did not have a set of prepared questions or subjects to canvass with applicants. He believed through conversation he would know the right person when he met him or her. He took no notes and made none afterwards.

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<sup>49</sup> *Simmons Canada Inc* [2005] B.C.C.A.A.A. No. 45 (McPhillips), ¶ 65; see also *Canadian Heating Products Ltd.* [1995] B.C.C.A.A.A. No. 387 (Munroe)

[201] They talked. It is not possible on the evidence to reconstruct a complete sequence for their free-flowing conversation. It began with Mr. Demand asking Mr. Jandu about his work experience. Mr. Jandu's union activism and staff experience with BCGEU and SEIU were assets. He spoke proudly about his accomplishments and attachment to BCGEU.

[202] As Mr. Jandu testified, Mr. Demand did speak about UNITE HERE's relationships with SEIU, which Mr. Jandu knew a little about. He had not participated in any raid on Local 40 while at SEIU, but he had while at BCGEU. Mr. Jandu had related his employment history, which included being in the BCGEU organizing department in 2007. It would be logical for Mr. Demand to ask about the GM Place raid. Before he did, Mr. Jandu volunteered he had participated, although he had not wanted to. If it was not BCGEU then CLAC might successfully have raided. Mr. Demand appreciated this candour.

[203] Mr. Demand wanted to know why he was no longer with a trade union he spoke favorably about. Mr. Jandu had to have a narrative about why he was no longer working for BCGEU. It was not that he was interviewed in an internal investigation and, although he gave lengthy explanations that absolved him or diminished his misconduct, the responsible Director, over the protests of his immediate supervisor, would no longer have him as an employee. Instead, he said there had been a difference because of an unfortunate incident. He conveyed the impression he had simply, and perhaps understandably, misplaced loyalty to a co-worker with a drug problem ahead of loyalty to the employer. There were problems in the department and he was singled out for punishment.

[204] Mr. Demand empathized, but how had the employment relationship ended? The answer Mr. Jandu gave, consistent with a proud successful career at BCGEU, was not that he was let go or that his term contract was not renewed for misconduct. It was that he made the hard decision to end the relationship because an unfortunate incident had been blown out of proportion. Tough situations require tough choices. This deflects responsibility and could evoke empathy.

[205] The facts are Mr. Jandu was interviewed November 17, 2010 by three BCGEU Directors and delivered to them an eleven-page statement dated November 28<sup>th</sup> on

twelve topics raised in the interview. On December 1<sup>st</sup>, Ms Rowles told him his employment was ending at the end of December.

[206] I find that in Mr. Jandu's account to Mr. Demand the essential circumstances known to Mr. Jandu about why his contract was not renewed were glossed over and reframed. It was not that Ms Rowles told him his employment was ending, but rather that he was the victim of compassion for a co-worker that was misunderstood and he made a noble and honourable decision.

[207] I make this finding because it is inherently probable that if Mr. Jandu had simply said his contract had not been renewed Mr. Demand would have asked about the nature and term of the contract and, perhaps how term contracts worked for employees covered by a collective agreement. It is also inherently probable Mr. Demand would have asked about the reason the contract was not renewed and why Mr. Jandu's union, representing him and other employees of BCGEU, did not do anything about the injustice done to him. How could an employer blowing something out of proportion and causing a dedicated employee to lose the job he loved and was devoted to not result in a grievance or some other action by his union? These and other questions in the same vein were avoided by Mr. Jandu by presenting that he made a voluntary decision to end the relationship.

[208] Is it likely on a balance of probabilities that Mr. Jandu told Mr. Demand that BCGEU sued him? I find it is not.

[209] If the lawsuit was because of Mr. Jandu's failure to report co-worker drug use and he had been punished by not having his contract renewed or extended, what was the reason for the lawsuit? If it was because of his failure to report co-worker drug use in a timely manner and he had voluntarily left employment with BCGEU what was the reason for the lawsuit?

[210] It is inherently improbable that Mr. Demand would not make any inquiry and completely ignore the fact BCGEU had sued Mr. Jandu. It is improbable, as Mr. Jandu testified, that he said BCGEU was so angry at him that it sued him and Mr. Demand did not ask why they sued him after he left. If the context was that BCGEU was angry because Mr. Jandu went to work for SEIU, then it is very probable Mr. Demand would

want to know more. Would BCGEU sue Mr. Jandu if he went to work for Local 40? And in any scenario or context, what happened to the lawsuit?

[211] How likely is it that a job applicant tells a prospective employer, even if the interview and hiring process is unconventional, that he was sued by a former employer and the prospective employer completely ignores this information and does nothing? It is not likely.

[212] As Ms Ervin testified, it would be expected that there was some investigation, some due diligence.

[213] Consider the context: the fact Messrs. Demand and Jandu were strangers; this was a trade union taking an Organizer to court not to arbitration; Mr. Jandu had been an activist and employee over a period of 14 years; Mr. Jandu was a member of a bargaining unit covered by a collective agreement; the lawsuit must have happened when Mr. Jandu was employed by SEIU; and a trade union employer suing an employee, rather than vice-versa, is not a common event in the local trade union community. What was so serious that a trade union spent members' dues to sue a former employee?

[214] Given the relationships among BCGEU, SEIU and Local 40, I am confident if Mr. Demand was told BCGEU sued Mr. Jandu since their employment relationship ended in 2010 Mr. Demand would have pursued it further. Why would he or anyone expose himself and his union to future unknown risks for a stranger?

[215] The evidence is clear that Mr. Demand left the interview impressed with Mr. Jandu's experience and their interaction and only one reservation. How would others accept working with someone who had been involved in a raid on Local 40?

[216] For reasons not fully explained, he was less concerned about Ms Ervin's opinion. He told her first, but was interested in the opinion of Mr. Klainbaum and the Organizers, particularly Ms Guevarra, who had lived through the raid. And this part of Mr. Jandu's history was discussed among the Organizer team.

[217] It is completely improbable that Mr. Demand, sensitive to the teams' concerns about the raiding part of Mr. Jandu's experience, would not report that BCGEU held such animosity toward Mr. Jandu for some reason that it commenced a lawsuit against him on some grounds, the outcome or status of which he did not bother to ask.

[218] I find it inherently improbable that, if he knew, Mr. Demand would tell Ms Ervin about a lawsuit by BCGEU against Mr. Jandu and not tell Mr. Klainbaum or others.

[219] It is equally improbable, if Mr. Demand knew, that with one exception, the subject of the lawsuit was not mentioned to anyone else at Local 40 from October 18, 2013 to April 15, 2015.

[220] Mr. Sano, who worked closely with Mr. Jandu, reported a rumor to Mr. Klainbaum, an expected behaviour if hearing of an actual or possible lawsuit by a union against a staff member. He must have done this because he had not heard about the lawsuit before March 2015.

[221] On a balance of probabilities, I find it is more likely Mr. Jandu did not tell Mr. Demand and Mr. Demand did not know there had been a BCGEU lawsuit against Mr. Jandu before March 2015. Mr. Demand's actions at that time corroborate this finding. He telephoned Mr. Finch at BCGEU, but personal privacy protection and the settlement release prevented him from learning about the lawsuit. He then turned to counsel, who searched the court registry and confirmed the rumor.

[222] It is unlikely the timing of these actions was contrived for a hidden agenda based on knowledge not shared since September 2013 simply because Mr. Sano had heard a rumor about a lawsuit that Mr. Demand had kept hidden. If he knew, why did Mr. Demand not act when Mr. Jandu and the union were seeking a salary increase for Mr. Jandu in collective bargaining in the fall of 2014? What was Mr. Demand waiting for?

[223] On the central issue of credibility in this dispute, I find Mr. Demand's testimony about what was disclosed at the interview is more credible than Mr. Jandu's.

[224] What of Ms Ervin's testimony? I find, as the employer submits, she is mistaken and has misremembered what Mr. Demand said to her. It was a BCGEU raid, not lawsuit.

[225] She and Mr. Jandu are clear about their conversation on October 18, 2013, the contents of which is instructive. First, as with Mr. Demand, Mr. Jandu was not transparent about his departure from BCGEU. Second, he told her he was sued by BCGEU and the core issue in the suit, which he had not told Mr. Demand. Third, she reacted as expected by asking if he had taken the list.

[226] Ms Ervin made no similar inquiry of Mr. Demand about the nature of the lawsuit. She spoke to no one about a lawsuit between being told on Monday that Mr. Jandu had been selected and meeting him on October 18<sup>th</sup>. She did not tell Ms Dyer, Mr. Worhaug, employer counsel or anyone other than Mr. Davies.

[227] My finding of fact is that Mr. Jandu did not disclose the existence or reasons for the BCGEU lawsuit to Mr. Demand, who did not tell Ms Ervin there had been a lawsuit.

[228] The best that can be concluded is that after being hiring Mr. Jandu discussed the lawsuit with Ms Ervin on October 18, 2013 and is projecting part of that discussion back to the September interview meeting with Mr. Demand. For unexplained reasons, Mr. Jandu was unwilling to disclose the conversation with Ms Ervin until ordered and she was unwilling to disclose it to Mr. Demand. Because Ms Ervin first disclosed the conversation to Mr. Davies on April 16, 2015, Mr. Demand could not have learned about it until the union's disclosure on June 8, 2016.

[229] Should the lawsuit have been disclosed during the interview? Yes. Both the fact and the cause of action should have been disclosed. This was a significant event in Mr. Jandu's working life that was more than just relevant to the position for which he was applying. It was part of the core trust a trade union employer places in its staff Organizers.

[230] Trade unions are competitive, mission-driven organizations that jealously guard their industrial and occupational territory and membership assets. Raiding was discussed by Mr. Demand. Mr. Jandu disclosed his involvement in a raid against his prospective employer. It was incumbent on him to go further and disclose he had a dispute with a former trade union employer over the organization of a target group of employees. As he did with Ms Ervin, he could have explained why he had done no wrong.

[231] The standard for disclosure when applying for a job is not apostolic and Mr. Jandu was, perhaps desperately, seeking employment. However, the trust a trade union places in its Organizers to safeguard its confidential membership and prospective membership information is at the core of the employment relationship. This trust is not a matter of experience, knowledge, competence, skill or credentials. It is a matter of character.

[232] Mr. Jandu had lived through a breach of that trust during the defection of BCGEU staff to BCNU and had signed the resulting confidentiality agreement. He had received a reminder of its importance in the August 9, 2011 letter. His behaviour had been questioned by former colleagues Mr. Anderson and Ms Labine in September 2011. He knew the moral worth placed on confidential membership and contact information by the trade union for which he had proudly worked. It was central to the protracted lawsuit in which he had undergone Examination for Discovery. He could expect there would be no less standard at Local 40.

[233] Settlement of the lawsuit two months before the interview did not erase it from his employment record. His failure to disclose the fact and content of the lawsuit was not merely an omission of an incidental fact. Although generously characterized as “serious omissions of key details” in Mr. Demand’s April 15, 2016 letter, it was suppression or concealment of a part of his employment history and trade union experience that was central to his candidacy as a Union Representative/Organizer. It was a breach of the implied obligation of honesty in recounting his employment history to a stranger interviewing him for a prospective employer.

[234] The fact of the lawsuit remained hidden to Mr. Demand until March 2015, but once known he took steps to investigate the rumor and when he had confirmation he acted. Informing Mr. Jandu that he was barred access, although on medical leave, was prudent and appropriate. In the context, it was more of an exile than a suspension with more consequences for Mr. Jandu’s reputation than his continuing entitlements under the collective agreement.

[235] Mr. Jandu’s response might have been shaped by his recent dealings with Mr. Demand, but he had an obligation to provide an explanation. This was his opportunity to do what should have been done at the hiring interview. Tell his story about why his actions at SEIU were not contrary to the confidentiality agreement he signed with BCGEU.

[236] His refusal to do so through his union, from which he also concealed information, did not lead to punitive action by the employer. Instead, it made the employer more suspicious and escalated the trustworthiness of assertions the employer wanted before accepting an explanation. This led to the difference about what it meant to confirm or

verify an explanation and reinforced the union's belief the employer had a hidden agenda. Both the employer and union were in a state of stratospheric suspicion. The explanation of September 11, 2015 did not satisfy the employer.

[237] The employer's suspicions proved to be well founded. The refusal and delay in providing an explanation that could be back checked and the delayed disclosure of union reliance on third-party corroboration sealed any prospect of resolving the dispute.

[238] The employer had cause to initiate the suspension in April 2015. It had cause to maintain the suspension in the absence of any or an inadequate explanation. It learned further cause to sustain the suspension when it gained access to BCGEU documents and saw the unexplained discrepancies between what they disclosed and what Mr. Jandu had told the employer.

[239] If there were a grievance, I would dismiss it. In the absence of one, I declare the employer had initial and ongoing cause to suspend Mr. Jandu from the workplace and subsequently from returning him to work when he was medically cleared to return.

[240] I reserve and retain jurisdiction over the interpretation and any matter arising from the implementation of this decision.

OCTOBER 27, 2016, NORTH VANCOUVER, BRITISH COLUMBIA.

*James E. Dorsey*

James E. Dorsey