

BCLRB No. B98/2014

BRITISH COLUMBIA LABOUR RELATIONS BOARD

0715980 B.C. LTD.

(the "Employer")

-and-

UNITE HERE, LOCAL 40

(the "Union")

PANEL: Leah Terai, Vice-Chair

APPEARANCES: Donald J. Jordan, Q.C., for the Employer
Michael J. Prokosh, for the Union

CASE NOS.: 65242 and 67123

DATE OF DECISION: May 29, 2014

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 The Union applies under Sections 133(1) and 135 of the *Labour Relations Code* (the "Code") for orders specifying the amount of wages payable to employees flowing from my order in *0715980 B.C. Ltd.*, BCLRB No. B158/2013, 232 C.L.R.B.R. (2d) 181 ("B158/2013") which states:

I order the Employer to pay to the employees affected by the breach of Section 54(1)(a) wages and other monetary benefits as set out in the Collective Agreement for the period January 19, 2013 up to and including March 10, 2013, using January, February and March 2012 as a basis for the calculation, and taking into account the actual mitigation. The amounts payable to employees are subject to statutory deductions. Severance payments are not to be considered in these calculations.

* * *

I will remain seized should there be any disputes concerning the implementation of this decision. (paras. 48-50)

2 The Union also seeks separate orders for payment to the Administrator of the Health and Welfare and Pension Plans and outstanding dues to the Union. It also seeks orders for disclosure of Records of Employment.

II. POSITIONS OF THE PARTIES

PAT PARSLEY

3 The Employer submits it will be content if Ms. Parsley files a statutory declaration to the effect that she did not receive any remuneration during the months of January and February 2013.

4 The Union filed a statutory declaration by Parsley in which she states the only remuneration received for the months of January and February 2013 was from the Employer for work done prior to January 18, 2013. She states she worked for a donut shop in January 2013 but was not paid for the approximate four hours she worked. The Union submits the amount of money the Employer owes Parsley pursuant to B158/2013 is \$821.32.

JENNIFER RENAAS

5 The Employer submits its information is that Renaas left the country on January 15, 2013 and if this was not accurate, it would suffice for Renaas to file a statutory declaration.

6 The Union submitted a statutory declaration by Renaas in which she states the only remuneration received for the months of January and February 2013 was from the Employer for work done prior to January 18, 2013. She states she went on vacation beginning February 14, 2013, however, had the Employer not closed its food and beverage department, she would not have gone on that vacation. The Union submits the amount owed by the Employer to Renaas pursuant to B158/2013 is \$1,772.80.

DYLAN HETU

7 The Employer submits Hetu worked at the Dolphins Resort (1985) Ltd. during the relevant period and would be seeking to compel the production of his employment records from that employer.

8 The Union submitted a statutory declaration by Hetu in which he states the only remuneration received for the months of January and February 2013 was from the Employer for work done prior to January 18, 2013. He states he began his employment with Dolphins Resort (1985) Ltd. in March 2013 and attached as an exhibit a copy of his first pay stub from that employer. The Union submits the amount of money owed by the Employer to Hetu pursuant to B158/2013 is \$2,026.64.

MICHAEL LANGILLE

9 The Employer submits Langille worked at the Royal Coachman Inn and would be seeking to compel production of his employment records from that employer.

10 The Union provided a copy of a letter dated April 25, 2014 which states "[t]his is to verify that Michael Langille has been employed at the Royal Coachman Inn since March 11, 2013". The Union submits Langille did not work at the Royal Coachman Inn during January or February 2013 and submits the Employer owes Langille pursuant to B158/2013 the amount of \$1,276.00.

ALLEN FOLSTROM

11 The Employer submits Folstrom was on paid vacation for the first two weeks of January 2013. It submits Folstrom worked throughout the relevant two-month period at Popsey's Log Cabin Restaurant and would be seeking to compel production of his employment records from that employer.

12 The Union says Folstrom was on vacation until January 18, 2013. It submits during the three weeks following January 18, 2013, Folstrom lost his full-time hours of work/income with the Employer. It says approximately three weeks after January 18,

2013 Mr. Folstrom worked at Popsey's Log Cabin Restaurant in Campbell River at \$16.00 per hour plus gratuities. The Union estimates Folstrom worked 20 hours per week for three weeks resulting in 60 hours of actual mitigation. The Union submits under B158/2013, the Employer owes Folstrom 184.5 hours' pay less 60 hours of actual mitigation for a total of 124.5 hours pay at the wage rate of \$16.94 for a total of \$2,109.03.

JIM CHEW

13 The Employer submits Chew was a casual employee who had been hired solely for the purpose of vacation relief for 39 hours in January 2013 and otherwise would not have worked in January and February 2013.

14 The Union submits as Chew was not employed with the Employer during January and February 2012 it would not be appropriate to use those months as a comparator for the purpose of calculating the amount owed to Chew. The Union submits as Chew worked 39 hours in January 2013 but zero hours in February 2013, the Employer ought to pay 39 hours on the assumption he would have worked the same number of hours in February as he did in January 2013. The Union says the amount of 39 hours pay at the wage rate of \$13.96 amounts to \$544.44.

15 The Union submits the Employer's argument that Chew was a casual employee who had been hired solely for the purpose of vacation relief in January 2013 is contradicted by information provided with its application showing that Chew worked for the Employer various hours in each month from June 2012 to December 2012.

BOB CROY

16 The Employer submits it will call evidence that when contacted in early January 2013 with respect to available work, Croy advised the chef who contacted him that he was not coming to work and was happy to remain home on Employment Insurance.

17 The Union disputes the Employer's allegation. It submits the most the Employer's allegation amounts to is that an unnamed and unidentified chef who may not have been a member of management spoke to Croy in early January 2013 and during that conversation, Croy stated he was not coming to work and was happy to remain home on Employment Insurance. The Union does not concede this conversation took place but even if it did, it says that does not amount to Croy having resigned or quit. The Union submits it has received confirmation from Croy that he did not resign his position and worked all his shifts until January 18, 2013 and has not received a T4 slip from the Employer. The Union submits the position taken by the Employer with respect to Croy is inconsistent with the agreement reflected in B158/2013 listing the affected employees which includes Croy.

18 The Union submits the amount of money owed by the Employer to Croy under B158/2013 is \$2,244.55.

DIANE PALMER

19 The Employer submits Palmer was absent on a one-year maternity leave which expired December 1, 2012. The Employer says she did not contact it to indicate she was returning to work. It says it will require a subpoena requiring her to provide evidence.

20 The Union submits the amount of money owed by the Employer to Palmer under B158/2013 is \$1,736.64 less any actual mitigation during the relevant period. The Union says the amount reflects the hours Palmer worked in January and February 2012 multiplied by her wage rate of \$12.06. The Union says Palmer was on maternity/parental leave until December 31, 2012. It says Palmer was ready, willing and able to work for the Employer in January and February 2013, however, the Employer did not offer Palmer any shifts during that two-month period of time. The Union submits the amount of money owed to Palmer under B158/2013 is \$1,736.64 less \$60.00 in actual mitigation for a total amount of \$1,676.64.

21 The Union says *Adventist Health Care Home Society (Rest Haven Lodge)*, BCLRB No. B62/2001 supports its position with respect to circumstances of an individual on maternity leave. The Union submits the Employer's argument is not consistent with Section 54 of the *Employment Standards Act*, R.S.B.C. 1996, c. 113 (the "Act" in that as soon as the leave of absence finished, the Employer was required to place Palmer in the same position she held prior to her leave of absence or in a comparable position. Further, the Union says pursuant to Article 16.05 of the Collective Agreement, all employees are to be afforded all benefits of maternity, paternity and adoption leave in accordance with prevailing Employment Standards legislation. The Union also refers to the principles reflected in the human rights case law on this issue including *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219.

MORNEAU SHEPELL

22 The Union says since its application, the vast majority of the monies owing to Morneau Shepell have been paid leaving a remaining balance of \$4.23.

OUTSTANDING UNION DUES

23 In its application of April 11, 2014, the Union says the Employer owes outstanding Union dues in the amount of \$339.12 as of March 2014.

24 In response, the Employer says it does not understand the nature of the claim made, the supporting documentation attached with the Union's application is completely obliterated and the Employer is not able to discern any basis upon which the Union makes this claim.

25 In its final reply, the Union says the outstanding balance owed by the Employer to the Union for dues remains at \$339.12 and attaches an un-redacted document headed "Checkoff Billing for March 2014" which lists certain employees.

RECORDS OF EMPLOYMENT

26 The Union also requests the Board issue an order requiring the Employer to disclose to the Union copies of the Records of Employment issued to employees with respect to the January 2013 Section 54 notice as well as Records of Employment issued as a result of a Section 54 notice issued January 6, 2014 concerning the March 7, 2014 closure of the Employer.

27 The Employer submits the Record of Employment is a document produced solely for the purposes of the *Employment Insurance Act*, S.C. 1996, c. 23 and it is not a document referable to the Union's representation of employees *vis-à-vis* the Employer.

28 The Union submits the Records of Employment are needed so it can obtain certain information regarding the employees as follows:

- a) confirmation as to which employees have been terminated;
- b) confirmation as to the date of termination;
- c) confirmation of the reason for which each ROE was issued;
- d) confirmation of the last date of employment of each employee;
- e) confirmation of whether each employee was paid any severance pay (and if so, the corresponding amount of severance pay);
- f) confirmation of whether each employee was paid out any vacation pay, (and if so the corresponding amount of vacation pay); and
- g) the date each ROE was issued.

29 The Union submits it needs the Records of Employment in order to fulfil its statutory obligation to represent employees in the bargaining unit with respect to Section 54 of the Code and its obligations under Section 12 of the Code.

30 The Union submits there is no need for an oral hearing and the matter can be determined on the basis of the written submissions and corresponding documents and statutory declarations. The Employer says an oral hearing will be required with respect to the claims on behalf of employees and the Employer will be seeking subpoenas to compel certain of the employees or those persons who employed them to attend and give evidence under oath.

III. ANALYSIS

31 In B158/2013, I ordered the Employer to pay to the employees affected by the breach of Section 54(1)(a) wages and other monetary benefits for the period January

19, 2013 to March 10, 2013 taking into account actual mitigation. I have read and considered the submissions of the parties and I find an oral hearing is not necessary to determine the question of monies to be paid.

32 With respect to Pat Parsley, I accept her statutory declaration that she did not receive remuneration for the period set out above and I accept the amount claimed on her behalf to be \$821.32.

33 With respect to Jennifer Renaas, I accept her statutory declaration that she would not have taken vacation from February 14, 2013 had the Employer not closed its food and beverage department. I accept the Union's calculation that the amount to be paid to her is \$1,772.80.

34 With respect to Dylan Hetu, I accept his statutory declaration that his employment began with Dolphins Resort (1985) Ltd. in March 2013. I accept the Union's calculation that the amount to be paid to Hetu is \$2,026.64.

35 With respect to Michael Langille, I accept the evidence of a letter dated April 25, 2014 on letterhead of the Royal Coachman Inn stating Langille was employed at the Royal Coachman Inn from March 11, 2013. I accept the Union's calculation of the amount to be paid to Langille is \$1,276.00.

36 With respect to Allen Folstrom, I am satisfied the Union's calculation of wages for the period January 19, 2013 to March 10, 2013 takes into account Folstrom's actual mitigation from his employment at Popsey's Log Cabin Restaurant in Campbell River. I am satisfied the amount to be paid to Folstrom as calculated by the Union is \$2,109.03.

37 With respect to Jim Chew, I accept that January and February 2012 cannot be used as a basis for calculating wages for the period January 19, 2013 to March 10, 2013. I do not accept the Employer's assertion that Chew was a casual employee hired solely for holiday relief in January 2013 and would not have worked otherwise because I accept that he had worked varying numbers of hours for the Employer in each month from June 2012 to December 2012. Accordingly, I am satisfied the amount to be paid to Chew ought to be calculated on the basis of the number of hours he worked in January 2013, which was 39 hours. I am satisfied the amount to be paid to Chew as calculated by the Union is \$544.44.

38 With respect to Bob Croy, under B158/2013 Croy was identified as an employee affected by the breach of Section 54(1)(a). Accordingly, the order for payment set out at paragraph 48 of that decision applies to him. There is a dispute as to whether Croy was offered work by the Employer in early January 2013 and he turned it down. Even if the offer was made, neither party has suggested that such work was available to Croy during the period January 19, 2013 to March 10, 2013. I accept the Union's submission that it has received confirmation from Croy that he did not resign or quit his employment. I am satisfied the amount to be paid to Croy as calculated by the Union is \$2,244.55.

39 With respect to Diane Palmer, there is a dispute as to her employment status in view of the expiry of one year of maternity leave. The Collective Agreement provides employees will be afforded all benefits of maternity, paternity and adoption leave in accordance with prevailing Employment Standards legislation. I am satisfied that under Section 54(3) of the Act the Employer was required to place Palmer in the position she held before taking leave or in a comparable position. The Employer says Palmer did not contact it to indicate she was returning to work. The Employer does not say Palmer was terminated from employment on the expiry of her maternity leave (the parties differ on whether the leave expired December 1 or December 31, 2012) or that it directed her to return to work and she resigned. I find Palmer retained employee status at the time the Employer ought to have given notice under Section 54 of the Code and was an employee affected by the change introduced by the Employer. I am satisfied the amount to be paid to Palmer as calculated by the Union is \$1,676.64.

40 I find the jurisdiction retained under paragraph 48 of B158/2013 does not extend to the Union's request for an order requiring the Employer to pay \$4.23 to Morneau Shepell, Administrator of the Health and Welfare and Pension Plans and to pay to the Union the amount of #339.12 in dues.

41 The Union also seeks an order requiring the Employer to disclose to the Union copies of the Records of Employment it has issued to employees with respect to the January 2013 Section 54 notice which formed the basis for my decision indexed as B158/2013. I find the jurisdiction retained under paragraph 48 of B158/2013 does not extend to this request. Even if I were to find the request falls within the jurisdiction retained under paragraph 48 of B158/2013, the Union has not persuaded me that the documents should be produced to it. With respect to the Union's request for production of Records of Employment issued as a result of a Section 54 notice issued by the Employer on January 6, 2014 concerning the closure of March 7, 2014, I find the jurisdiction I retained under paragraph 48 of B158/2013 does not extend to a Section 54 notice issued January 6, 2014.

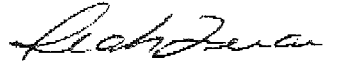
IV. CONCLUSION

42 Pursuant to Section 133(1), I order the Employer to pay the following individuals the sums listed, less minimum required statutory deductions, within 14 calendar days from the date of this order:

Pat Parsley:	\$ 821.32;
Jennifer Renaas:	\$ 1,772.80;
Dylan Hetu:	\$ 2,026.64;
Michael Langille:	\$ 1,276.00;
Allen Folstrom:	\$ 2,109.03;
Jim Chew:	\$ 544.44;
Bob Croy:	\$ 2,244.55;
Diane Palmer (deHaan):	\$ 1,676.64

43 This decision will be filed in the Supreme Court Registry in accordance with Section 135 of the Code.

LABOUR RELATIONS BOARD



LEAH TERAJ
VICE-CHAIR