

IN THE SUPREME COURT OF BRITISH COLUMBIA

COPY

Date: 20060719
Docket: S064642
Registry: Vancouver

Between:

**Bruce Bell, in his personal capacity and in his capacity as
President of the Telecommunications Workers Union**

Plaintiff

And:

**Jim Christensen, in his capacity as Secretary-Treasurer
of the Telecommunications Workers Union**

Defendant

Before: The Honourable Mr. Justice Silverman

Oral Reasons for Judgment

In Chambers
July 19, 2006

Counsel for Plaintiff

J. Bowering

Counsel for Defendant

J.D. Mostowich

Place of Hearing:

Vancouver, B.C.

[1] **THE COURT:** Nothing that I say in these reasons is intended to or should be used to influence or affect any subsequent proceedings with respect to this matter.

[2] The plaintiff is the president of the Telecommunications Workers Union. The defendant is the secretary-treasurer of that union and is named as defendant by virtue of the union's constitution which arguably requires that he be so named in such a case.

[3] The Writ of Summons seeks a declaration and injunction to the effect that certain charges and allegations made against the plaintiff ostensibly made under the constitution are *ultra vires* the constitution and null and void.

[4] This application before me today is brought by the plaintiff seeking an interim injunction prohibiting a hearing of those charges until the final disposition of this matter and more specifically prohibiting a hearing of the charges which is set for tomorrow. I granted short leave and heard argument from both sides this morning.

[5] This union has been suffering from internal conflict for some time arising out of a collective agreement with one of its main employers which was entered into in November of 2005. That collective agreement was ratified by 60 percent of the membership. I do not know how many voted but it is a membership of approximately 14,000 people. Subsequently it has become clear that the union is deeply divided over that agreement and perhaps over other matters as well. There is a significant faction which blames the plaintiff and perhaps others as well for what they consider to be a poor deal, and they have been seeking his removal from office for some time.

[6] There have been prior attempts to have him removed from office, ostensibly attempts taken within the terms of the constitution. There was a non-confidence motion which passed by a simple majority after which it was expected that he would resign, although not legally required to do so. He did not resign. Under the terms of the constitution there was a motion that all Executive Council positions including that of the plaintiff be put up for election prior to the ordinary expiry of their terms. That was also passed by simple majority and ultimately went to court at which time it was determined, by my Brother Smith, to be a motion which was *ultra vires* the terms of the constitution, because it had not been passed by a two-thirds majority. There was a recall motion which also failed because there was not a two-thirds majority.

[7] On June the 5th of 2006, that is not quite two months ago, there was a memorandum from 13 convention delegates which was created which charged the president ostensibly under the constitution with dereliction of duty. The substance of those allegations arguably are those same issues that from one point of view are really political issues — the issues that have made him unpopular within the faction that opposes him and the issues that led to those various other attempts to have him removed that have already been mentioned.

[8] On July the 5th, he received notice, again ostensibly under the constitution, that those charges had been referred to the remaining members of the Executive Council for hearing according to a process which is mandated by the constitution. That notice refers to him as “the person sought to be removed” which I have no difficulty concluding means removed from office.

[9] The Executive Council is the governing council of the union which consists of 21 members including the plaintiff and the defendant. The defendant has recused himself from being one of the potential triers at the hearing which is now set for tomorrow and the plaintiff is the person charged so that he is not going to be a trier either. That leaves 19 remaining members of the Executive Council from whom what is referred to in the constitution as the Trial Board, and sometimes the Trial Panel, from whom that body could be chosen. There is a procedure for the conduct of the hearing which is also provided for in the constitution. Generally the procedures relate to charges against ordinary members but there is a special section that deals with charges against Executive Council members and that section mandates that his triers shall be other members of the Executive Council.

[10] The plaintiff now argues that all 19 of those persons from whom his triers would be picked are biased and cannot possibly conduct a fair hearing. All have been involved in one way or another with at least some of the previous steps that I have referred to, of a political nature, involving the plaintiff. Undoubtedly, some of those persons have shown partiality towards the plaintiff rather than against him. The plaintiff argues that makes them no more able to be impartial and fair triers of fact. They all have prior knowledge. They have all shown prior expressions of partiality in one form or another.

[11] There is no other realistic procedure for a hearing of such charges allowed for under the constitution. If the panel cannot be picked from the members of the Executive Council presumably the annual convention of delegates could fashion a proceeding because they have the ultimate power to amend the constitution but that

would obviously be a cumbersome procedure and not one which one would want to undertake lightly or very often.

[12] Last night some members of the Executive Council met, and it is not clear to me how many, it certainly was not 21 of them. It is clear the plaintiff was not there. It is not clear unfortunately how many others were there — perhaps as many as 20, perhaps less. It is clear that the defendant was there; it is his affidavit. I accept the evidence in this affidavit and I will now refer to portions of it.

[13] The reason I am unable to say how many people were there is because the affidavit says after some introductory comments:

“In the evening of July 18th Executive Council of the TWA met.”

[14] Perhaps that means 20. In any event they met to discuss matters related to this action and I quote:

“After a long discussion a decision was made to proceed with the Trial Board as made up of members of the Executive Council. A full and frank discussion regarding the use of a third party took place at the Executive Council meeting. A decision was made to call the accusers to see if they would agree to a third party to assist in mediation of the issue. They were not in agreement unless there were not enough members of Executive Council willing to stand as Trial Panel members.”

[15] I go on to another paragraph of that same affidavit:

“At the end of discussion additional members recused themselves and one member was removed from the panel due to an apprehension of bias.”

[16] I pause there. I will come back to that. The next paragraph:

“There are 12 members on the panel at this time. The chair of the panel is [name given.] The other 11 members of the panel are ...”

[17] And then there are 11 names mentioned and finally a decision was made to go forward on the hearing date.

[18] It is not clear how many members recused themselves, since it is not clear how many were in attendance. It is clear that there are 12 members left since we started with 19 and one member was removed. It is possible that there were as many as six members who recused themselves. While the affidavit does not say that they recused themselves because of a self perception that they might be biased or that they might be perceived by others as being biased, I have no difficulty drawing one of those two inferences as being the only possibilities why members would have recused themselves at the time. I note again that one member was actually removed from the panel due to an apprehension of bias.

[19] There remain 12 Executive Council members from whom the Trial Board can be picked. That does not change the position of the plaintiff which is that all 19 of them had prior knowledge and prior partiality. Now, there are 12 of them remaining that have prior knowledge and prior partiality.

[20] As I have indicated, the hearing is set for tomorrow. The plaintiff has been aware of this since the notice on July 5th. There have been attempts to resolve this in some other way and that is why this application is made on short notice. I am satisfied that nothing turns on that.

[21] There are only seven months remaining in the presidency of the plaintiff and I will return to that comment when I deal with the question of irreparable harm and balance of convenience. The substance of the allegations against the plaintiff are utterly denied. The plaintiff takes the view that this hearing set for tomorrow is merely one more step in the continuing attempts by his political opponents to achieve a political victory by his ouster from his office.

[22] The plaintiff argues that, in those circumstances, the Executive Council and each of its members should be enjoined from conducting the hearing tomorrow on an interim basis and until the trial of this matter. There are two issues which the plaintiff puts forth. One of them I do not consider to have merit and that is the argument that the dereliction of duty charges are not in accordance and have not been processed in accordance with the procedures allowed for in the constitution. In my view, even if that were the case, there are an abundance of court decisions which comment on the duties of inferior tribunals in these kinds of circumstances. The strict adherence to procedures is not something which is ordinarily required so long as there have been honest attempts and general fairness. In my view that is not an issue which has sufficient merit to it to enable me to consider it further as the basis for an interim injunction.

[23] The more difficult issue is the question of bias. The plaintiff argues that it need not be proven at this stage. It merely needs to be a triable issue. The defendant argues that this is simply not the time or the place to make that determination. I will return to that argument momentarily.

[24] The plaintiff also has to address the question of irreparable harm which in this case is tied together with the question of balance of convenience. He argues there are only seven months to go in his presidency. If he loses his position as a result of a hearing tomorrow, his presidency will effectively be over and there is not much likelihood that he will be regaining it before that seven months is up. He argues that maintaining the status quo is the only fair way to address this, and that such a course would result in no harm to the defendant, or to the union, particularly considering that the dereliction of duty allegations are not ongoing allegations. They all pre-date or primarily pre-date the collective agreement. Irreparable harm to the union is also something that the plaintiff asks me to consider. The union has elected this man and has also adopted the collective agreement which is the source of all this dissent and adopted it by a significant majority through their political process. The union would suffer irreparable harm, the plaintiff argues, as would the democratic process, if the president is removed from office through what the plaintiff says is partisan political manoeuvring disguised as legal argument.

[25] The defendant makes the opposite argument assuming we even get to the question of irreparable harm and that is that if the hearing is not allowed to go ahead tomorrow, the plaintiff will be able to finish serving out his term as President before this matter will ever get to trial. That is simply because of the state of the trial list. Whether or not there could be an earlier trial clearly is open to debate. It is not impossible, but there is no question it would be a number of months at the earliest before this matter could get to trial. The defendant also argues, reversing the plaintiff's argument about the harm to the union, that if that occurs, the democratic

process will have failed the union because the hearing set for tomorrow has been set in accordance with the democratic principles which are enshrined in the constitution of this union. So argues the defendant.

[26] In my view, the application for an interim injunction must be dismissed, and I do dismiss it.

[27] There is, in my view, no evidence of bias before me nor even evidence of an apprehension of bias. If prior voting against this president were to disqualify union officials from sitting on boards of the sort that is contemplated in this case, no union would ever be able to have a hearing. There would never be an unbiased hearing. Union politics often go on for years. People's views are usually, or at least often, well-known and they certainly cannot all be barred on the basis of bias because they have voted one way or the other in the past. Something more is required to establish an apprehension of bias. Voting one way or the other is not evidence of bias; I will not go so far as to say that the mere exercise of one's democratic right to vote could never be evidence of bias, however, in the circumstances of this case, it is not. Nor is it evidence of an apprehension of bias. That would be so, even if it were abundantly clear how each of the remaining 12 people voted, and even if they had voted on every issue, against the plaintiff.

[28] I am not saying there is no bias on the part of some or perhaps even all of these remaining 12 people. What I am saying is I do not have any evidence of it. I am also cognizant of the evidence of what occurred last night. I consider that to be evidence of the feelings about this matter of those persons who recused themselves,

but also of the others who attended. They attended in my view with a spirit which is some evidence that would give pause to anyone who was wondering whether or not there was bias. By no means is it definitive, but it certainly is not evidence of bias and might well be evidence to the contrary. I note as well that one member was removed from the panel due to an apprehension of bias. I take that to mean that, that was a person who was removed against his or her will by the remaining members.

[29] There is no evidence of bias or apprehension of bias in my view.

[30] In law, this application is premature. There has to be some evidence before I can determine that there is bias, or a triable issue with respect to bias. The only way there can be evidence is if the impugned officials have an opportunity to respond to the allegations of bias. It may well be that if given that opportunity, evidence of bias will emerge. It would be unfortunate if that would result in everybody returning to court for further court applications at great expense, but that consideration will not justify the court becoming involved in internal union politics at an earlier stage than the evidence would justify.

[31] Just a couple of brief comments from the case law. A decision from the Labour Relations Board in the case of **Coleman v. Rentz**, BCLRB No. B282/95 (QL) at para. 127:

The standard established by the courts to impugn a domestic tribunal has been the requirement of actual bias.

[32] As I have indicated, even if the standard were apprehension of bias, I would come to the same conclusion.

[33] In the case of ***Vlahovic v. Teamsters' Joint Council No. 36 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers*** (1979), 17 B.C.L.R. 277, p. 280:

As Vlahovic has exhausted his domestic remedies, he is now able to invoke the general jurisdiction of this court.

[34] Page 281:

In a domestic tribunal such as the one with which we are concerned here, a reasonable likelihood of bias very often exists. Indeed, the plaintiff, by his membership in the union and consequent agreement to abide by the constitution, has impliedly consented to be subject to the disciplinary machinery of the Teamsters and the jurisdiction of the trial panel for which the constitution provides.

[35] Further down the same page:

In such a situation as with a statutory tribunal which is specifically authorized by the legislature to act, the plaintiff must show the existence of "actual bias"....

[36] And a different ***Vlahovic v. Teamsters Local Union No. 213***, [1977] B.C.J. No. 56 (S.C.) (QL) at para. 7, halfway through the paragraph:

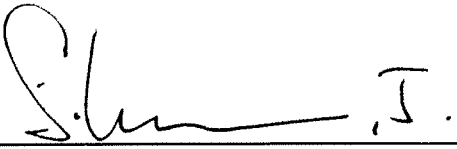
The trial has not commenced. When it does the plaintiff may apply for leave to be represented by counsel. If he does, from the history, one may well think it unlikely that his application will succeed. But that cannot be assumed. And even if this application to the Court had been made after refusal of counsel by the trial panel the Court could not interfere at that stage because of article [such and such] of the International constitution binding the plaintiff to exhaust all remedies provided for in the constitution and by the International Union before resorting to any court under the principle established in *White v. Kuzych* [citation given].

[37] The argument that there is not evidence of bias at this stage is enough to dispose of this application. However, I do want to make a comment on the question of irreparable harm and balance of convenience. In my view, it is of some importance that the constitution allows for an appeal from the hearing which will presumably take place tomorrow to an utterly independent third party and that is the Canadian Labour Congress ombudsperson. In other words, a remedy is available, within the constitution, for the matter to be heard by an objective person.

[38] Nothing I have said is intended to be any sort of indication one way or another with respect to the merits of the allegations against the plaintiff or indeed, other than the comments I have made about the evidence before me, of whether or not any Executive Council member is or is not biased. If there are any further proceedings, I certainly do not intend to consider myself seized of the matter.

[39] My view with respect to costs subject to what you would say, Mr. Mostowich, would be to not deal with them but to have them adjourned over to be dealt with by the judge who will ultimately deal with the final disposition of this matter.

[40] MS. MOSTOWICH: I think that's appropriate, My Lord.


The Honourable Mr. Justice Silverman