

IN THE MATTER OF AN ARBITRATION
Pursuant to the *Labour Relations Act*, 1995,

BETWEEN:

LABOURERES' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 506.

("Union")

-and-

TRI-KRETE LIMITED

("Employer")

RE: GRIEVANCES OF ANGELO BASSO

Board of Arbitration: Yasmeena Mohamed, Sole Arbitrator

Appearances for the Union: Craig Flood, Counsel

Appearances for the Employer: Paul Sebunya, Counsel

Hearing date: December 8, 2009.

INTERIM DECISION

With respect to the individual grievances of Angelo Basso dated October 26, 2009, August 5, 2009 and August 6th 2009, I hereby issue the following interim decision.

At the outset of the hearing, the Employer brought a preliminary motion, objecting to my jurisdiction to hear the above noted grievances.

The Employer submitted that I lacked jurisdiction to hear the above noted grievances on the grounds that the grievances had been improperly filed in compliance with section 23:02 of the Collective Agreement. The Employer further submitted that the grievances were filed outside the time limitations set out in section 23:02 of the Collective Agreement.

The Union in response requested an adjournment of the hearing on the grounds that the Employer's preliminary motion objecting to my jurisdiction came as a complete surprise to the Union. The Union submitted that the Employer had failed to provide proper and timely notice of its intention to object to my jurisdiction. The Union further submitted that an objection to my jurisdiction to hear the matter is critical and therefore it should be provided an opportunity to fully respond to the objection. The Union further requested that the Employer bear the costs of the adjournment.

Having heard the submissions of both parties, I have concluded that the Union is entitled to an adjournment of the matter. My conclusion is based on the following reasons:

The common law and statutes that govern tribunals often grant tribunals the freedom to be more informal than the courts. However, there are minimum rules of procedure for most tribunals as well as common law principles of natural justice and procedural fairness.

Like courts, tribunals generally must follow a fair process in terms of the rights of the affected parties to be fully heard and their right to an impartial decision maker. These principles of natural justice and procedural fairness include rules governing notice, disclosure, presenting evidence and adjournments. These rules ensure that all parties have been informed of the case against them and that all parties are allowed to present evidence either in pursuance or in defence of their respective cases. These rules therefore compel tribunals to grant an adjournment if a party would otherwise be deprived of a reasonable opportunity to fully present its case.

In this instance, the Union was not put on notice prior to the hearing that the Employer intended to raise a preliminary objection to my jurisdiction. The Union therefore was deprived of a reasonable opportunity to present its case in response to the Employer's jurisdictional objection. The question of whether I have jurisdiction or not is critical to the ultimate outcome of the case. Therefore, the Union must be given an opportunity to fully prepare and respond to the Employer's jurisdictional objection.

The adjournment is hereby granted subject to following conditions:

1. Parties will set a new date for the hearing of the jurisdictional issue no later than January 30, 2010.
2. Parties will make full disclosure of all the evidence they intend to rely upon with respect to the jurisdictional issue.
3. No costs to be awarded against the Employer.

Dated this day of December 8, 2009 at Etobicoke

Yasmeena Mohamed

Yasmeena Mohamed, Sole Arbitrator