

IN THE MATTER OF AN ARBITRATION*(Under the Labour Relations Act, 1995)*

BETWEEN:

LAKEHEAD UNIVERSITY

(the "University")

-AND-

LAKEHEAD UNIVERSITY FACULTY ASSOCIATION

(the "Association")

AND IN THE MATTER OF an arbitration of grievances of Dr. Jean-Yves Bernard
under collective agreement between the parties

BEFORE: G. T. SURDYKOWSKI – Sole Arbitrator

APPEARANCES:

For the University: Barry Kuretzky, Counsel; James D. Henderson, Counsel; Ane Lowe,
Law Clerk; Ray Raslack, Associate Vice President, Human Resources (retired); Rodney
Hanley, Provost and Vice President Academic; Kathy Pozihun, Vice President Finance
and Administration.

For the Association: Chris Hacio, Counsel; Professor Jerry Phillips, LUFA
Representative; Dr. Jean Yves Bernard, Grievor.

HEARING BEING HELD IN THUNDER BAY, ONTARIO.

RECEIVED

DEC 09 2014

Ministry of Labour

DRS - ARBITRATION SERVICES

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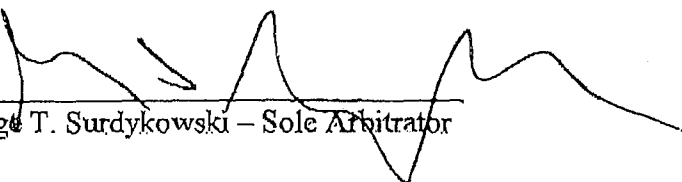
1. Further issues concerning the documentary evidence in this proceeding arose during the hearing on November 24 and 25, 2015. It emerged during Dr. Constance Russell's testimony that there may have been drafts exchanged of what has been referred to as the "joint Affidavit" which she and others signed. The "joint Affidavit" was in evidence, but no drafts or communication in that respect had been produced. It also emerged that there may have been email or other communications between Dr. Russell and the investigator engaged by the University who produced the "Noonan Report".
2. Dr. Russell was required to look for and produce and such documentary evidence in her possession, power, or control. She did so, the result being quite a number of additional documents. This naturally prompted the Association to ask for production of any such documents in the possession, power, or control of any of the other signatories to the "joint Affidavit". The University agreed to conduct the appropriate search in that respect, and to produce any such documents if they exist.
3. In addition, the documentary evidence includes copies of complaints and other documents filed by the grievor at the Human Rights Tribunal of Ontario (the "HRTTO") in French and English translations of those documents by the University. Dr. Russell was referred to and gave evidence about the English translations, following which counsel for the Association advised that the grievor took issue with the accuracy of some of the English translations. For example, some of the English translations of the grievor's complaints to the HRTTO include multiple uses of the word "liar" in reference to at least some of the persons who were involved in the conflict with the grievor which led to the disciplines and eventually the discharge of the grievor which are the subject of this proceeding. The grievor apparently denies that he used the word "liar" in the French language document(s) as filed. This assertion of the grievor's disagreement with the English translations of his documents is disconcerting because, as counsel for the University pointed out, that very question was asked of the Association when the hearing in this matter began nearly a year ago. The Association was asked whether it took issue with the accuracy of any of the translated documents, and no issue was raised until the hearing November 25, 2015. The University asked and I considered it appropriate to require the grievor to identify the English translations that he takes issue with.
3. Because the parties and counsel seemed to be agreeable my initial thought was that it was unnecessary to make and formal orders or directions. However, upon further reflection and having regard to how this matter has proceeded to date, I consider it appropriate to do so in order make clear what is required.

4. Accordingly:

- (a) **I ORDER THE UNIVERSITY TO** conduct a thorough appropriate search for any drafts of the "joint Affidavit" or any drafts of any individual Affidavit which has been or may be referred to, and any documented communications in that respect. This includes any such drafts, and any email or other communications about the drafts of the "joint Affidavit" or any individual Affidavit, and any notes or other records in that respect or with respect to any verbal communications, which are in the possession, power or control of the University or of any other individual whether or not signatories to the "joint Affidavit", and whether or not they have already testified or will testify in this proceeding.
- (b) **I ORDER THAT** if a legal privilege is claimed with respect to any document to which the Order in paragraph 4(a) applies, the document and the privilege claimed must be identified so that that issue can be dealt with if necessary.
- (c) **I ORDER THE ASSOCIATION AND THE GRIEVOR** to identify in writing every translation that they or either of them takes issue with in every English translated document that has been produced in this proceeding, whether or not the document has been referred to in the evidence, and to specify what they or either of them asserts is in every case the correct translation.
- (d) **I ORDER THAT** the production required as aforesaid be completed by no later than 4:00 p.m. on Friday, January 30, 2015, so that counsel have time to review the productions before the hearing resumes on March 4, 2015 (as currently scheduled).

5. I will convene a telephone conference call with counsel to deal with any issues concerning the production ordered herein.

DATED AT TORONTO THIS 28TH DAY OF NOVEMBER 2014.


George T. Surdykowski – Sole Arbitrator