IN THE MATTER OF AN ARBITRATION

BETWEEN:

K-BRO LINEN SYSTEMS, INC.

("Employer")

and

TEAMSTERS LOCAL UNION 847

("Union")

AND IN THE MATTER OF A GRIEVANCE IN RESPECT OF GURMIT SANGHA

Stephen Raymond Arbitrator

<u>Appearances for the Employer:</u>

Robert Bayne

Mike Beach

Anthony Panacci

Liz Boroniec

<u>Appearances for the Union:</u>

Marisa Pollock

Tom Fraser

Rao Harbans

Gurmit Sangha

A hearing in this matter was held in Mississauga on January 21, 2016.

AWARD

This is a grievance in respect of the amount of vacation pay owed to the grievor. There is an issue as to my jurisdiction. The Employer takes the position that the grievance is untimely and moot. The Union disagrees.

The grievance is dated October 25, 2013. Although the grievance is in respect of vacation pay owing, it is agreed by the parties that the vacation pay of the grievor has been properly calculated since July, 2012.

The Employer takes the position that Articles 5.02 (b) and 6.03 of the collective agreement between the parties are very clear. The grievance cannot relate to circumstances that are more than seven days prior to the filing of the grievance and there is no jurisdiction for an arbitrator to grant a remedy for violations in 2012 and prior in respect of a grievance filed in October, 2013. The Articles state:

> 5.02 No grievance shall be considered:
>
> (b) where the circumstances giving rise to it occurred or originated more than seven (7) days before the filing of the grievance.
>
> 6.03 The arbitrator shall not order any financial liability or award against the Employer for or relating to any period of time greater than seven (7) days prior to the date the written grievance was delivered at Step 2 of the Grievance procedure. This article shall apply to any award or order related to any violation of Articles 12, 13 and 15 of this Agreement.

The Employer notes that the entitlement to vacation pay is in Article 13 of the collective agreement.

The Employer relied on jurisprudence that supported the proposition that, even without the specific provisions of this collective agreement, with a continuing grievance, such as the calculation of vacation pay, that it would be inappropriate to seek recovery for events that occurred years before. The Employer relied upon the decisions in: *Atlantic Packaging Products Ltd. v. Canadian Paperworkers Union, Local 333,* (1993) 34 L.A.C. (4th) 59 (Starkman), *CEP v. Swissplas Ltd.* , (2008) 92 C.L.A.S. 125 (Howe), *Curtis Products Corp. v. IWA-Canada, Local 500,* (2002) 110 L.A.C. (4th) 193 (Langille), *Nailor Industries Inc. v. SMWIA, Local 30,* (2009) 100 C.L.A.S. 144 (Reilly), *Queen's University v. Fraser,* (1985) 19 D.L.R. (4th) 240 (Div. Ct.), *St. Raphael's Nursing Homes Ltd. v. London & District Service Workers' Union, Local 220,* (1985) 18 L.A.C. (3d) 430 (Roberts) and *UAW, Local 673 v. York Gears Ltd.,* (1968) 19 L.A.C. 252 (Weatherill).

The Union takes the position that Article 5.02 (b) does not apply in these circumstances. That Article is about grievances, it is not about arbitration. It is the Employer who does not consider the grievance, it does not say the arbitrator may not consider the grievance.

The Union also takes the position that the Articles relied upon by the Employer are unenforceable. It relies on the "*Hydro*" line of cases which support the proposition that a collective agreement cannot grant a right, as in the right to grieve, and then simultaneously take away that right, such as for probationary employees who have no right to grieve. The Union relied on *Re Crawford Transportation Inc. and Teamsters, Local 879,* (2003) 121 L.A.C. (4th) 314 (Lynk) which said that it was improper for a collective agreement to provide the right of drivers to be dispatched by seniority and at the same time prohibit grievances in relation thereto.

The Employer replied that the *Crawford Transportation* case has no application in the matter before me. There, the right to grieve was taken away. In this matter, it is the amount of remedy that can be recovered that is in issue. The right to grieve has not been impacted in any way. To determine otherwise, he asserts would be to render meaningless any timeline in any collective agreement.

I agree with the Employer. The remedy for any grievance, pursuant to the collective agreement, can only start seven days prior to the date of the grievance. It is an agreed fact that there was no violation of the collective agreement during this period or after the grievance was filed. The right to grieve has not been impacted by the terms of the collective agreement, only the extent of the remedy. Accordingly, the grievance is dismissed.

Dated at Toronto, this 19th day of February, 2016.

Stephen Raymond