

IN THE MATTER OF AN ARBITRATION

BETWEEN

1445397 Ontario Inc.

Marko Radic

Sandy Radic

(jointly "Employer")

and

Labourers International Union of North America, Local 183

("Union")

Re: Grievance dated December 1, 2017

SOLE ARBITRATOR: James Hayes

APPEARANCES

For the Employer

No-one

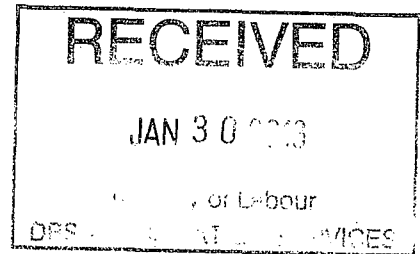
For the Union

Neil Keating, Counsel

Arlindo Soares, Sector Coordinator

Ricardo Puppin, Business Representative

A hearing was held on January 25, 2018



AWARD

1. The Union alleges that the Employer is in breach of numerous Collective Agreement provisions by failing to employ Union members, and failing to pay the required wages and remittances, in connection with work performed at a Bucci Homes project located at or near 445 Ontario Street in Milton.

2. No-one appeared at the scheduled arbitration hearing on behalf of the Employer. Consistent with the practice of the Ontario Labour Relations Board, a half-hour grace period was provided against the possibility that the Employer had been delayed.

3. Ricardo Puppin gave the following material testimony on behalf of the Union:

- Mr. Puppin has been a Business Representative in the framing sector since 2011 following 18 years work in the sector. He has extensive knowledge and experience of the work in question.
- Notice of the hearing was provided to the Employer by regular and registered mail although the registered letter was not picked up. Mr. Puppin spoke to Marko Radic personally on January 17, 2017 and reminded him of the time and place of the hearing. Mr. Radic replied: "my lawyer knows about it".
- The Pre-hearing Production Order dated January 12, 2017 was also sent to the Employer. No response was received.
- The numbered company, Marko Radic, and Sandy Radic are parties and signatories to a Pieceworker Participation Agreement dated December 2, 2015 ("PPA") (Exhibit 2).
- Pursuant to the PPA, the Employer is bound by the current Residential Housing Carpentry and Framing Collective Agreement ("Collective Agreement").

- On November 28, 2017, Mr. Puppini attended at the Bucci job site in Milton. Mr. Puppini was familiar with Marko Radic and spoke to him at that time. He observed Mr. Radic and four other persons working on 8 units that had two floors already completed. Mr. Puppini returned to the site on November 29, 2017. He made notes of his site visits.
- Bucci is a non-union builder. Accordingly, the Employer was working in effect as a main framing contractor. Mr. Puppini checked Union records and located the PPA. He determined that the Employer had not advised the Union that he was carrying on business as a "prime" or "main" contractor as required by Section 6 of the PPA. Nor had the Employer employed Union members or made any of the remittances required by the Collective Agreement. Union members were available.
- The Union grieved by letter dated December 1, 2017.
- Based upon his extensive experience in the sector, Mr. Puppini estimates that the work in question would have required 160 hours performed by 5 workers.

4. On the basis of the foregoing testimony, counsel submitted that:

- The numbered company, Marko Radic, and Sandy Radic were jointly and severally liable for the Employer violations of the Collective Agreement and PPA.
- Breaches of the Articles referenced in the Grievance had been established with particular reference to Article 2.08 of Schedule B to the Collective Agreement which provides that:

It is understood that a pieceworker who is working for a non-unionized Builder or framing contractor is directly responsible for making all payments to their hourly employee(s), including the payment of all benefits and remittances owing under Schedule A.

- The Employer did not provide the Union with notice of the work in question. Accordingly, the Employer was in breach of Section 6 of the PPA and liable for the payment of \$2,000.00 as required by the Section.
- The Employer was liable, on the basis of *Blouin Drywall* damages, as follows:

4 workers at Carpenters/Framers' Assistant hourly wage rate of \$35.23 with \$10.92 remittances per hour

160 hours for each worker (640 hours in total)

total owed for 4 workers: \$29,536.00
- The Employer was liable in remittances for Crew Leader Marko Radic as follows:

160 hours at \$10.92 per hour
total owed: \$1,747.20
- The Employer was liable for the costs of the Arbitration pursuant to Articles 15 and 23 of Schedule D – Expedited Arbitration System.

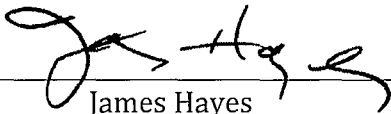
5. Having regard to the uncontradicted testimony adduced and the submissions made by counsel, I find and declare the following:

- The Employer (1445397 Ontario Inc., Marko Radic, Sandy Radic) is bound to Residential Housing Carpentry and Framing Collective Agreement pursuant to the PPA dated December 2, 2015 and the Employer parties are jointly and severally liable for the breaches thereof identified below and for the relief granted in connection therewith.
- The Employer has breached the Collective Agreement and PPA as alleged in the Grievance.
- The Employer shall make the following payments to the Union forthwith:

\$29,536.00 [Blouin Drywall damages for wages and remittances]
\$ 1,747.20 [Marko Radic]
\$ 2,000.00 [PPA, Section 6]
\$ 3,390.00 [Arbitration costs, inclusive of tax]

Total owed: \$36,673.20

Dated at Toronto, Ontario this 29th day of January, 2018.


James Hayes