

IN THE MATTER OF AN ARBITRATION

BETWEEN:

The Ontario Energy Board

and

The Society of Energy Professionals

(Application filed by W. Shawn Davitt)

Before: William Kaplan
Sole Arbitrator

Appearances

For the OEB: Catherine Peters
Hicks Morley
Barristers & Solicitors

For the Society: Jeffrey Andrew
Cavalluzzo
Barristers & Solicitors

Mr. W. Shawn Davitt appeared on his own behalf.

This matter proceeded by written submissions beginning on May 29, 2018 and concluding on July 31, 2018.

Introduction

On May 16, 2017 a mediation took place between the Ontario Energy Board (hereafter “the employer”) and the Society of Energy Professionals (hereafter “the union”) concerning the November 19, 2015 grievance of Mr. W. Shawn Davitt (hereafter “the grievor”). The grievor was a probationary employee who had been terminated from employment.

A grievance taking issue with that termination, and other matters, had been filed under the collective agreement pursuant to the *Labour Relations Act, 1995*. In the normal course when the matter proceeded to a hearing, an attempt was made to mediate the outstanding issues in dispute. No agreement was reached, but the employer subsequently forwarded a written settlement offer. The union recommended acceptance, but the grievor was unwilling to agree to its terms. The union then exercised its statutory right to resolve the grievance. I was not seized in any way with respect to any matter under this settlement.

Shortly thereafter the grievor filed a section 74 complaint at the Ontario Labour Relations Board (OLRB) alleging a breach by the union of its duty of fair representation. It was scheduled for a hearing in April 2018; however, that proceeding was adjourned pending the outcome of a complaint or complaints filed by the grievor at the Law Society of Ontario alleging misconduct/conflict of interest on the part of union counsel. The LSO determined not to proceed with the complaint. On May 29, 2018, the grievor wrote me and asked me to schedule a

hearing referring to the *Public Service of Ontario Act, 2006*. This letter also made reference to a “reprisal complaint.” As would be expected, I asked counsel for the parties to provide me with their submissions, thus initiating a process that also fully involved Mr. Davitt, a lawyer, who represented himself. It is fair to say that there was considerable and lengthy correspondence attaching voluminous secondary materials.

Submissions

In brief, and summarily stated, both the employer and the union took the position that I had no further jurisdiction. The grievance that proceeded before me was filed under the collective agreement and the *Labour Relations Act, 1995*. The parties to that grievance were the employer and the union. They settled the grievance, as they were legally entitled to do. And once the grievance was settled – and I was not seized under the settlement – my jurisdiction came to an end.

For his part, even though the grievor was specifically and repeatedly requested to confine his submissions to the jurisdictional issue, he made reference to various and self-evidently inapplicable statutes, alleged fraud and serious misconduct on the part of the employer and the union, described myriad legal actions taken elsewhere and requested production of numerous documents (which he argued had to be considered in advance of any decision on jurisdiction). In any event, the grievor also asserted that I retained jurisdiction for reasons set out in his filings and asked that a

hearing be scheduled forthwith. The grievor continued to file submissions after July 31st, the deadline that was set for his final reply.

Decision

Having carefully considered the submissions of the parties, I am of the view that I am *functus* and have no further jurisdiction. The determination of this matter is actually quite straightforward. A grievance was filed under the collective agreement pursuant to the *Labour Relations Act, 1995*. As it was a normal grievance filed in the usual way, i.e. under the collective agreement pursuant to the *Labour Relations Act, 1995*, a mediation occurred. Shortly thereafter the parties agreed on a settlement.

The grievor, as sometimes happens, refused to sign the settlement and the union, pursuant to its legal rights and responsibilities, made the decision to execute the settlement nevertheless as an exercise of its exclusive representation rights. That ended my involvement – and jurisdiction – as I was not seized under the settlement. Simply put, once the grievance was resolved my jurisdiction came to an end. The grievor, as he was entitled, objected and filed a duty of fair representation complaint at the OLRB. According to OLRB Case No. 1282-17-U dated July 25, 2018, that complaint was “abandoned.” If there was any doubt about the absence of jurisdiction, the OLRB decision conclusively terminates the possibility of any further involvement on my part.

Although the grievor requested that his production order be given effect prior to the rendering of any decision, I am not willing to accept this request. In addition to the numerous, detailed and extensive submissions made by email correspondence since May 29, 2018, the grievor filed a 35-page brief, a lengthy affidavit, together with volumes of supporting documents and authorities, not to mention the further submissions that were filed after the deadline. There is nothing in any of that material – all of which has been exhaustively reviewed – that indicates any legal basis for me to assume jurisdiction. The evidence establishes that there is no dispute between the parties: the employer and the union have resolved the grievance. This case is closed.

DATED at Toronto this 15th day of August 2018.

“William Kaplan”

William Kaplan, Sole Arbitrator