

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Georgia Pacific Canada

("Employer")

- and -

United Steelworkers, Local 14994

("Union")

Grievance of Glen Kelly

ARBITRATOR:

Nimal Dissanayake

APPEARANCES:

FOR THE EMPLOYER:

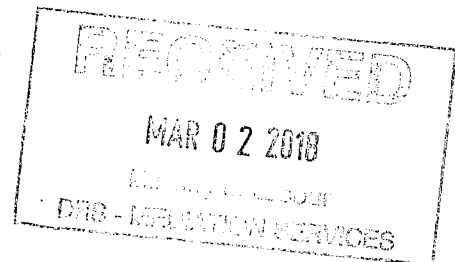
George Waggott (Counsel)
Habib Mavani (Student-at-law)
and Helga Tan

FOR THE UNION:

Tom Walsh
USW Area Coordinator

HEARING:

February 15, 2018



AWARD

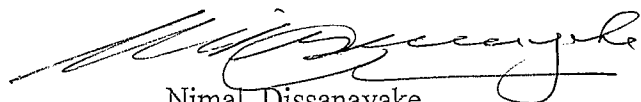
- [1] I was appointed as sole arbitrator to hear and determine a grievance dated September 3, 2014 filed by Mr. Glen Kelly (Grievor"). It alleges that he was denied severance pay and termination pay in contravention of the collective agreement and legislation.
- [2] When the hearing was first convened on August 15, 2017, the grievor was not in attendance. Union counsel advised that the grievor had informed that he was unable to attend the arbitration because he had to attend a funeral.
- [3] The parties had brief discussions with the arbitrator on the issues in the grievance, filed a number of documents, and agreed to a time table for further disclosure and particulars. As a result of the grievor's absence the hearing was adjourned to February 15, 2018. I issued a written notice of hearing for that date.
- [4] When the hearing reconvened on February 15, 2018, the grievor was again not in attendance. Union counsel advised me that the grievor had received notice that the hearing was scheduled for February 15, 2018, and that the grievor had informed in writing that he had decided not to participate in the arbitration.
- [5] I invited counsel for their respective positions in the circumstances. Employer counsel stated that on the merits of the grievance the employer would be maintaining its position that the grievor was not entitled to severance or termination pay because at the time the employer's facility in question was idled the grievor was no longer an active employee, had taken early retirement, and was receiving an unreduced pension.
- [6] Counsel stated that it is a well-established arbitral principle that where a party makes a monitory claim it has the onus of adducing clear and cogent evidence to establish the claim. In the absence of the grievor, the union would not have the ability to adduce any evidence to support the grievance. In the circumstances, the employer would be taking the position that the grievance should be dismissed because the employer would have no case to defend against.
- [7] Alternatively, employer counsel stated that the employer would be taking the position that the grievor was precluded from pursuing his present claim as a result of the following release

clause in the Minutes of Settlement he entered into following mediation at the Human Rights Tribunal of Ontario on March 21, 2011, resolving an application under S. 34 of the Human Rights Code. It reads:

The Applicant hereby releases the Respondents from any and all applications, claims, demands, complaints, or actions of any kind arising out of the events that gave rise to this application, including but not limited to claims under the common law, including all outstanding grievances under the Collective Agreement between the union and the Corporate Respondent, and the *Ontario Human Rights Code*. The Applicant will not make any application, complaint or claim or bring any action against the Respondents and these Minutes of Settlement may be raised as a complete bar to any such application, claim, complaint or action.

- [8] The employer would be submitting that having received the benefits under that settlement, including \$50,000 in general damages, the grievor is not now entitled to resile from the release he agreed to. Counsel cited case law which he submitted obliged arbitrators to hold parties to terms of settlement agreed to.
- [9] Union counsel stated that the union does not agree with the employer's position on the merits of the grievance or the effect of the Minutes of Settlement. However, when questioned by the arbitrator, he conceded that in light of the grievor's decision not to participate in the arbitration, was not in a position to offer any evidence in support of the claim in the grievance.
- [10] The parties then agreed to a mediation-arbitration process, and requested that if mediation is unsuccessful, the arbitrator issue a decision with succinct reasons. During the course of the mediation union counsel advised that the union was withdrawing the instant grievance. The parties further agreed that the arbitrator record the outcome of the proceeding in a decision.
- [11] This decision is issued pursuant to that agreement. The grievance is hereby declared to be withdrawn.

Signed this 22nd day of February 2018 at Hamilton, Ontario



Nimal Dissanayake

Arbitrator