

IN THE MATTER OF AN ARBITRATION

BETWEEN

**BRICKLAYERS, MASONS INDEPENDENT UNION OF CANADA LOCAL 1,
LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183,
AND MASONRY COUNCIL OF UNIONS TORONTO AND VICINITY**

(collectively the "Union")

and

2121122 ONTARIO LTD.

("Employer")

Re: Grievance dated March 25, 2019

SOLE ARBITRATOR: James Hayes

APPEARANCES

For the Union

Stephen Krashinsky, Counsel
Cesar Rodrigues, Sector Coordinator
Paulo Rodrigues, Business Agent

For the Employer

Walter Thornton, Counsel
Shawn Adkins, Counsel
Lino Vitorio

A hearing was held in Toronto on April 29, 2019.

AWARD

1. This Grievance came on for hearing pursuant to the Bricklaying Enforcement System set out in Schedule C of the relevant Collective Agreement and, in particular, the Article 2 Expedited Arbitration provision thereof.

2. During the course of Openings by counsel, it became clear that they were divided with respect to whether or not the Employer should be permitted to adduce a line of evidence – in effect, an explanation – for what took place leading up to the filing of the Grievance at issue. Following discussions during open hearing, the Union requested that the Arbitrator render a ruling on the question prior to proceeding further. The Employer did not oppose this request.

3. While the scope and contours of the Grievance have yet to be fully articulated, I understand the Union to be asserting generally that the Employer has filed many months of Monthly Reports that demonstrate on their face that Alexandre M.V. Delgado was not paid hourly wages, with appropriate remittances, in accordance with the Collective Agreement.

4. And, while the full scope of the defence to the Grievance has yet to be fully articulated, I understand the Employer to be asserting, as a matter of fact, that Mr. Delgado was paid approximately \$2500 *more* in 2018 wages (calculated annually) than was required by the Collective Agreement having regard to his actual hours

worked. As I understand it, the Employer wishes to explain that any inaccuracies in the Monthly Reports were attributable to its attempt to comply with the 'Labour Market Impact Assessment' requirements of Service Canada.

5. Following brief Openings, the Union objected to the introduction of any material by the Employer relating to this 'explanation'. The Union submits that an Arbitrator draws his or her jurisdiction entirely from the Collective Agreement and that he or she is not permitted, in effect, to look outside of its requirements. The Employer Monthly Reports demonstrate, admittedly, that Mr. Delgado was not paid in accordance with the Collective Agreement. That should be the end of the matter. It is: "irrelevant that other things are happening"; "any reference to the labour market system doesn't matter". The Employer response was equally succinct.

6. With all due respect, it would be premature to rule as the Union seeks before the case has even begun. While the Union may ultimately prevail on the general issue, the Employer is entitled to mount a reasonable defence to the Grievance. It will be necessary, on any view of the case, for the Arbitrator to receive evidence as to when and how much compensation the Employer paid to Mr. Delgado and the Union. An explanation of the 'why' of what happened will in all likelihood be directly and inextricably related to the 'when' and 'how much'. Any legal argument as to relevance or admissibility or the jurisdiction of an arbitrator to rely upon the 'why' should better be made in Closing with the benefit of an evidentiary base.

7. Both parties are represented by very experienced counsel. From their respective Openings it is clear that there is ample scope for agreement with respect to the essential facts and documents that will be required to determine this Grievance.

8. Accordingly, I direct that counsel review the proposed exhibits that have been produced to date and advise – subject to the overall objection raised by the Union – whether or not any are in dispute. If either party seeks further or better production, that party should promptly advise the other.

9. The Grievance will proceed on a later date.

Dated at Toronto, Ontario this 2nd day of May, 2019.


James Hayes