

IN THE MATTER OF AN ARBITRATION

B e t w e e n:

AV TERRACE BAY INC.

(the “Company”)

- and -

UNITED STEELWORKERS, LOCAL 665

(the “Union”)

Re: grievance of Kyle Lapinskie

Russell Goodfellow – Sole Arbitrator

APPEARING FOR THE COMPANY:

Lorne Firman, Counsel

APPEARING FOR THE UNION:

Herb Daniher, National Representative

Hearing held October 19, 2020; further written submission October 23, 2020.

AWARD

This is a termination case.

The grievor, Kyle Lapinskie, was hired on May 27, 2015. His employment was terminated on November 28, 2016, 16 months later. The reason for termination was his failure to meet a condition of hiring: securing a 4th class power engineer licence within 12 months. Mr. Lapinskie had been reminded of the requirement on several occasions. The Company provided Mr. Lapinskie with two weeks' pay on a "without prejudice basis".

The Union grieved the termination. The Union asserted *if* the grievor was properly removed from the position then, as an employee with seniority rights, he should have been offered the opportunity to fill vacancies. The Company disagreed that the grievor had any such rights, given the terms of his hiring and, before me, also argued that I am without jurisdiction to hear the grievance because it was referred to arbitration beyond the time limits set out in the collective agreement or, in the alternative, that the grievance should be dismissed for undue delay or laches.

At the request of the Union, and over the objection of the Company, I heard all matters, including the merits of the grievance, together, in a single hearing day. No formal evidence was led. The Company provided two books of documents books and two volumes of case law. The Union referred to no documents or cases of its own.

Several hours after the hearing was over, however, the Union emailed me and Company counsel a copy of correspondence that appeared to confirm that the Company had agreed to extend the time limits for the referral to arbitration, by approximately four weeks, within which time the referral had been made. The Company objected to the Union's attempt to introduce evidence post-hearing, while asserting, at the same time, that it had no effect its delay or laches argument.

Even assuming I have jurisdiction to consider the grievance (either on the basis that the collective agreement time limits for referral to arbitration are not mandatory or that they were extended and met) and even assuming the grievor had the collective agreement right to be

considered for vacant positions (or to be laid off with recall rights, as the Union also asserted at the hearing), I decline to do so. I find the grievance is properly dismissed on the basis of undue delay or laches.

The grievance was filed in November 2016. The initial referral to arbitration was made in January 2017. The matter then sat, without being advanced further, for more than three-and-one-half years, until I was invited to hear the case in August 2020.

The Union attributes this inordinate delay to the existence of a great many other grievances being filed and needing attention. Some included matters affecting the entire bargaining unit and others involved termination, including of the Local Union President. The Union also notes that the Company was kept aware, through correspondence and otherwise, of the Union's desire for the grievance to be resolved or heard at arbitration, with the Company expressly agreeing to the latter, at least as of March 2017.

I accept these factual assertions. The Company's documents bear them out. It is also true that over the course of those three or four years almost all relevant managerial personnel, including human resources personnel, left the Company. In my view the three or four year delay in advancing the grievance to arbitration is both extraordinary and prejudicial.

In this case, it would mean that the Company, now fully four years after the fact, would be required to demonstrate, in the absence of the relevant personnel, that there were *no vacancies* three or four years earlier, or if there were vacancies they were not ones the grievor was *qualified to fill*, or if there were vacancies the grievor was qualified to fill that they were not given to other employees with (even) *less seniority*. All of this assumes, further, that the terms of the grievor's hiring were not material to the issue or, if material, could also be satisfactorily explored at this stage.

The collective agreement requires grievances to be pursued "expeditiously". The same is contemplated by the *Labour Relations Act, 1995*. What occurred here is not expedition. It is extreme delay. At any point, the Union could have secured the appointment of an arbitrator, under section 48 of the *Act* or otherwise, to ensure that a hearing would occur within a

reasonable period of time. The Union not having taken such steps the Company is entitled to rely on the exceptional delay and the prejudice it would create.

The grievance is dismissed.

DATED this 19th day of November 2020.

A handwritten signature in black ink, consisting of a large, stylized capital 'A' with a horizontal line through it, enclosed within an oval shape.

Russell Goodfellow – Sole Arbitrator