IN THE MATTER OF *THE ONTARIO LABOUR RELATIONS ACT, 1995 S.O. 1995 c.1*

AND IN THE MATTER OF ARBITRATIONS

B E T W E E N;

SILOAM QUALITY CLEANING SERVICES LTD.

(the “Employer”)

AND

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2
BREWERY, GENERAL AND PROFESSIONAL WORKERS’ UNION

(The “Union”)

AND IN THE MATTER OF A GROUP GRIEVANCE CONCERNING PAYSTUBS, MINISTRY FILE NO.11502-XR-23,

AND IN THE MATTER OF A GROUP GRIEVANCE CONCERNING PENSION CONTRIBUTIONS, MINISTRY FILE NO.10470-RR-23

David Starkman Arbitrator

No one appearing for the Employer

Taylor Akin,

Counsel for the Union

A Virtual Hering concerning the Paystub Grievance was held on April 6, 2024 and a Virtual Hearing concerning the Pension Grievance was held on June 25, 2024.

DECISION

This Award concerns the Union's request for damages, including punitive damages, for the Employer's conduct with respect to two arbitration proceedings concerning paystubs and pension contributions and in particular with respect to the failure of the Employer to produce business records as Ordered by this Board of Arbitration.

With respect to the pay stub grievance I was appointed by the Ministry of Labour pursuant to section 49 of the *Ontario Labour Relations Act* (the "*Act*") to adjudicate the grievance on April 6, 2024. The hearing was held virtually. No one appeared for the Employer. After considering the submissions of the Union the following Order dated May 9, 2024 was issued:

> In these circumstances it is hereby Ordered that the Employer produce to the Union, on or before July 5, 2024 pay stubs or other payroll records for employees employed at 474 Elgin Street from November 1, 2022 until February 29, 2024 setting out the following for each individual employee:
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> 1. Wages paid for each pay period,
> 2. Vacation pay,
> 3. Sick or personal days used,
> 4. Holiday pay,
> 5. Accurate year to date calculations for all payments and deductions.
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> The purpose of this Order is to allow the Union to verify that the appropriate payments and vacation pay calculations have been made.

The Union advised that no information has been provided by the Employer pursuant to this Order.

With respect to the grievance concerning pension contributions I was appointed by the Ministry of Labour pursuant to section 48 of the *Act,* and in consultation with the Union the matter was scheduled to be heard on June 25, 2024. The Employer did not participate in scheduling the date despite being asked to do so, and did not appear for the virtual hearing on that date.

After considering the documents presented and the submissions of the Union, the following Order dated June, 28, 2024 was issued:

> I hereby Order the Employer, to provide, on or before July 5, 2024, to the Union and the Plan Administrator, with respect to all employees in the bargaining unit from April 1, 2022 until the present time the following information on a monthly basis:

a. Name;
b. Social Insurance Number;
c. Monthly remittance;
d. Pensionable earning;
e. Year to date contributions;
f. Employer portion of arrears owing due to error, or late enrolment by the Employer.

The Union advised that no information has been provided by the Employer pursuant to this Order.

By correspondence dated August 9, 2024 the Union requested general damages for the Employer's violation of the provisions of the collective agreement and punitive damages for the Employer's failure to produce the business records in violation of the Orders of this Board of Arbitration. Included with the request was the affidavit of Ms. Belkis Casado-Daly the Business Agent of the Union with knowledge of the workplaces which are the subject matter of these grievances.

Ms. Casado-Daly's affidavit indicated that the Employer has two cleaning contracts. The first is for the Ray Friel Recreation Complex which employes five cleaners and the second for a building at 474 Elgin Street which employes ten cleaners.

GENERAL DAMAGES

Included with her Affidavit is correspondence from the Pension Plan indicating that the Employer had not made contributions from April 1, 2022 until February 23, 2023, which she estimated to be $4,442.58.

In her Affidavit she also provided calculations which indicated the following amounts were owing:

Incorrect pay by failing to include negotiated wage increases $368.00 per worker,

Pension plan Deductions Owed After Wage Increase Applied equals $36.16 per worker

The total amount owing for these discrepancies is $4041.60.

Outstanding Vacation Pay. The total owed is $11,555.60

Total General Damages claimed is $20, 039.78.

Following receipt of the request for damages, the Employer advised by email that it had compiled with the provisions of the collective agreement with respect to the payment of wages and vacation pay to employees.

The Board requested that the Employer indicate what evidence it was relying on to support the statement that it had complied with its obligations under the provisions of the collective agreement. No evidence was forthcoming.

I have considered the evidence presented by the Union, and noted that the Employer provided no evidence which contradicted the evidence presented by the Union. In these circumstances and based upon the Will Say statement of Belkis Casado-Daly presented at the hearing on April 6, 2024 and the Affidavit evidence of Belkis Casado-Daly dated August 9, 2024, presented at the hearing on June 25, 2024, I hereby Order the Employer to pay as compensatory damages to the Union in trust in the amount of $20,039.78.

PUNITIVE DAMAGES

The Union has requested a punitive damage award of $10,000.00. In its submission the Union referred to a number of arbitral decisions. In *Limo Jet Gold Express Ltd. and Public Service Alliance of Canada, Local 05/21081* 171 L.A.C. (4th) 28 (D.L. Larson), the Union engaged in an illegal strike and the Employer requested an Award of punitive damages.

At para. 133 the Board affirmed that Boards of Arbitration have the jurisdiction to award punitive damages:

> 133. While at one time arbitrators were considered to have jurisdiction only to award compensatory damages, it is now settled that they can award aggravated and punitive damages in appropriate cases:

> *O.P.S.E.U. v. Seneca College of Applied Arts & Technology* (2004), 133 L.A.C. (4th) 193 (Ont. S.C.J. Div. Ct.). In that case, the court adopted the test laid down by the Supreme Court of Canada in *Weber v. Ontario Hydro* (1995), 125 D.L.R. (4th) 583, dealing with the jurisdiction of arbitrators generally, including claims in tort, that if the essential character of the issue of aggravated or punitive damages arises out of the collective agreement, the arbitration board has exclusive jurisdiction to deal with it. It held that it is well established that labour arbitrators have broad remedial power, including the power to award damages which must necessarily include the jurisdiction to award aggravated and punitive damages.

The Board then continued at para. 137 to discuss when an award of punitive damages is appropriate:

> 137. By contrast, punitive damages are not compensatory. They are intended to have a deterrent effect on the community at large sending a message that certain conduct will not be tolerated. They may be awarded where there is an independent or separate actionable wrong and the conduct of the wrongdoer is so high-handed and reprehensive that it offends the arbitrator's sense of decency. In the Hill case, the Supreme Court of Canda described this remedy at p. 42 as follows:
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>> Punitive damages may be awarded in situations where the defendant's conduct is so malicious, oppressive and high-handed that if offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant. They are in the nature of a fine which is meant to act as a deterrent to the defendant and others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.

In *Toronto Catholic District School Board and Ontario English Catholic Teachers' Association* ,329, L.A.C. (4^{th}) 1 (J. Parmar), the Union sought an Order of punitive damages after the Employer failed to comply with several Orders with respect to the operation of various joint health and safety committees. At paras. 185-186 the Board made the following comments with respect to obligations to comply with the Orders of arbitration boards:

> 185. Consistent with the principles of Bhasin, I find the Employer has an obligation to act in good faith in respect of the performance of its contractual duties under the collective agreement. This includes an obligation to respect the operation of the collective agreement, and in particular the arbitration provisions of the collective agreement. This, of course, includes abiding by the outcome of an arbitration by making good faith efforts to comply with any orders issued as a result of that outcome. The LRA, which is the statute that governs these parties, is premised on the maintenance of industrial peace during periods when a collective agreement is in effect by requiring the resolution of all disputes through the grievance arbitration process. The entire structure of labour law would be undermined if parties could simply disregard their legal obligation to be bound by the outcome of the peaceful dispute resolution process that is labour arbitration. There would be no reason for any party to participate in arbitration if the result could just be ignored with impunity.

In determining that an award of punitive damages was appropriate the Board continued at para. 195:

> 195 The blatant failure to comply with the Orders in the circumstances, in the absence of any reasonable explanation for the non-compliance and in the absence of any evidence of meaningful efforts to comply, must offend the labour relations community's sense of decency. To not respond to such conduct would sanction the undermining of the rule of law in arbitration. To decline to impose serious consequences for the disregard of multiple orders in a case such as this would send the message that there is no point in having disputes resolved through arbitration in the first place because a determination is effectively meaningless.

In this case the Employer has failed to comply with two Orders of this Board of Arbitration with respect to the production of business records. It has offered no explanation for its refusal or inability to do so.

After each Order was issued the Employer indicated that it had paid all monies owing and was not in violation of the provisions of the collective, but despite being requested to do so, offered no evidence in support of its assertions.

The issues raised in these grievances could have been expeditiously and effectively resolved if the Employer had produced the business records which were in its possession. Instead the Employer chose to ignore the Orders of the Board which has prolonged the hearing and which undermines the collective bargaining regime in Ontario which requires that all disputes arising during the term of a collective agreement be resolved by binding arbitration.

The decision by the Employer to disregard the Orders of this Arbitration Board requires a serious response and as noted in *Toronto Catholic District School Board and Ontario English Catholic Teachers' Association* ,329, L.A.C. (4^{th}) 1 (J. Parmar), at para. 195: "An award of punitive damages is necessary to deter the Employer from continuing this conduct and to deter others from engaging in this sort of conduct."

Accordingly I make an Award of punitive damages in the amount of $10,000.00

CONCLUSION

For the reasons outlined above, I make the following Orders:

1. The Employer has violated article 12.03 of the collective agreement by not providing pay stubs and has violated Schedule B of the collective agreement by not making pension contributions in accordance with this Schedule.

2. The Employer has violated the Orders of this Board dated May 9, 2024 and June 28, 2024.

3. The Employer is directed to pay the sum of $20.039.78 to the Union as compensatory damages, to be held in trust and payable to those employees detrimentally affected by the actions of the Employer.

4. The Employer is directed to pay as punitive damages the sum of $10,000.00.

Both these sums of money are to be paid to the Union within 30 days of the date of this Award.

I will remain seized of any issues concerning the interpretation or implementation of this Award.

Dated at Maberly, Ontario this day of 6th day of September, 2024.

David Starkman.