



ALRB Cite: Junction Construction et al. v. Carpenters Local 2410 et al.
[1990] Alta. L.R.B.R. 190

JUNCTION CONSTRUCTION LTD., VICTUS MANAGEMENT LTD., CANA CONSTRUCTION LTD., Applicants and UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2410 and JOHN TURNER, Respondents. Board File: GE-00355. May 1, 1990.

Andrew C.L. Sims, Q.C., Chair, J. Murray and A. MacDonald, Members

For the Applicant: Hugh McPhail (Counsel)

For Respondents: Murray D. McGown, Q.C.

Reconsideration - s. 11(4) - Employee terminated by labour subcontractor because of decision by project management company to bar him from project site - Original panel ordering reinstatement of employee to job site - Notice of proceedings not provided to project management company - Application granted - New hearing ordered.

Three companies sought reconsideration of a prior oral decision. The original Board panel held that Junction Construction Ltd. ("Junction") had violated the freeze provisions of s. 145(1) by terminating one of its carpenters. The panel had found that the project management company, Victus Management Ltd. ("Victus"), did not have sufficient cause for barring the employee from the job site because of a safety infraction. Junction was directed to reinstate the complainant at the project site. The companies argued that the Board erred in failing to provide all affected parties with notice of the proceedings.

The application for reconsideration was granted and a new hearing ordered. The Board had not given adequate notice of the unfair labour practice hearing to all affected parties. The original panel's order affected Victus since the Board had essentially concluded that it was responsible for the breach of the Code. Junction had been left in the position of having to comply with a Board directive that gave it no assistance in overcoming the obstacles to site access imposed by Victus.

REASONS FOR DECISION

Andrew C.L. Sims, Q.C., Chair: This is a reconsideration application brought by three companies involved in building the Bearberry Sulphur Extractor for Shell Canada Ltd. They are Victus Management Ltd. (Victus), CANA Management Ltd. (CANA) and Junction Construction Ltd. (Junction). The case

involves the termination of John Turner, one of Junction's carpenters.

The United Brotherhood of Carpenters and Joiners of America Local 2410 (The Carpenters) sought certification for the employees of Junction. Junction terminated Mr. Turner shortly after the Union filed the certification application. As a result, the Union complained that his termination violated sections of the Labour Relations Code.

The owners, Shell Canada Ltd., contracted with Victus to manage the project. Victus, in turn, contracted with CANA to do the mechanical work. CANA contracted with Junction to supply the labour. The Carpenters complained solely against Junction. Junction's defence, in summary, was that the termination had nothing to do with Union affiliation, but was due to Victus telling Junction that Mr. Turner was barred from the job because of a safety infraction.

A panel of the Board heard these complaints and issued an oral decision confirmed by the following letter dated March 16, 1990.

The Union here alleged violations of Section 145(1) and various provisions under Section 147 in Junction Limited on February 20, 1990. We find that the sole reason for his termination was the decision of Victus Management to bar him from the site which Junction Construction Limited then found required Junction to terminate his employment. In the result, we dismiss the Union's allegations that Junction Construction Limited violated various provisions within S. 147.

However, we do find that Mr. Turner's termination was a violation of section 145(1) of the Code, respect of Mr. John Turner whose employment was terminated by Junction Construction Limited. Since Junction Construction Limited has not established proper and sufficient cause under s. 148 of the Code for Mr. Turner's dismissal. We do not find that there was proper and sufficient cause arising from the safety incident on February 20, 1990 that he should have been barred from the site. Thus, we find that Victus Management effectively caused Junction Construction

Limited to violate S. 145(1) of the Code.

In the result, we hereby direct that Junction Construction Limited forthwith reinstate Mr. Turner to his employment as a scaffolder at Shell's Bearberry project and reimburse him for lost regular wages and benefits to which he would have otherwise been entitled not later than 14 calendar days from March 15, 1990. The Board shall retain jurisdiction to adjudicate any dispute over the payment of any wages or benefits for a 30 day period after this date.

In making this finding, we cast no aspersions on Mr. Webster's sincerity or dedication to the importance of safety at the above site.

Victus, CANA and Junction all seek reconsideration. Shell was originally included but later withdrew. Their grounds, extracted from three letters from their Counsel received March 19th and 20th, are:

- (a) The direction given affects the applicants, Victus, CANA and Shell, yet contrary to Section 15(5), and the rules of natural justice, they were given no notice of the proceedings, nor any opportunity to present evidence or arguments.
- (b) The decision appears to infer a term of employment being a just cause clause into the contract of employment where no such clause existed.
- (c) If such a clause exists, then, pursuant to Section 15(4), the matter should have been referred to arbitration.
- (d) The decision fails to consider the provisions of the Occupational Health and Safety Act and regulations of The Province of Alberta.
- (e) The Board erred in its interpretation and construction of Section 145(1) of the Code by failing to apply the "business as usual" standard and test. Section 148 does not provide that the employer must have just cause in order to terminate the employment of an employee at any time during the "freeze" established under Section 145(1).

(Points (c) and (d) were not pursued at the hearing).

Certain additional facts were adduced in evidence before the reconsideration panel, or are apparent from the Board's records.

At the original hearing, no one from CANA attended. A Mr. Colin Webster from Victus attended, but only as a witness to testify at the request of Junction. Neither CANA nor Victus are shown as parties to the proceeding. The Board gave no formal notice of its proceedings to either CANA or Victus.

Mr. Thompson from Junction testified that after the decision, he received a memo from R. Brasnett of CANA saying

Please be advised that CANA has been instructed by Victus Management that Mr. John Turner will not be allowed back on site at the Bearberry Demonstration project.

Your Superintendent Mr. Joe Overacker has been informed of this decision. We have attached a copy of Victus Supervisors investigation report for your records.

Mr. Thompson also produced a document, consisting of two clauses extracted from Junction's contract with CANA (Junction being the Subcontractor, CANA the Contractor). It reads:

6. Safety

Both parties will assume responsibility for jobsite safety. The Contractor will be responsible for managing general jobsite safety and establishing safe work procedures and will bear all costs related to Workers' Compensation Board assessments, ambulance or emergency charges and any other safety related costs. The Subcontractor agrees to observe all jobsite safety requirements of the Contractor and all laws, regulations and codes concerning safety standards. The Subcontractor retains the right to refuse to execute any work not considered safe by it or any of its employees, and shall notify the Contractor immediately if such a situation arises.

4. Discipline

The Subcontractor shall have sole authority and responsibility to discipline or dismiss its employees. If at any time the Contractor considers that any employee of the Subcontractor is not performing tasks required of him or is performing those tasks in a manner which in the Contractor's opinion adversely affects the safety on the jobsite or the performance of the work on the Project, the Contractor shall bring its complaint to the attention of the jobsite supervisor of the Subcontractor, and the Subcontractor shall immediately take all necessary steps to remedy the situation to the satisfaction of the Contractor.

After the hearing, Mr. Thompson says the panel adjourned to consider its decision. Either at that point, or during the recess, Mr. Chris Webster, the witness who worked for Victus, left. When the panel returned, the Vice-Chair asked whether Mr. Webster from Victus was still there because he wanted him to hear the decision, which was directed to CANA and Victus.

The oral decision was reproduced in letter form on March 20th. The Board Officer apparently phoned Junction to get Victus' fax number to send them the decision directly.

We will deal first with the question of notice. Counsel for the Union relies upon the following helpful quotation from de Villars & Jones, *Principles of Administrative Law* at p. 210.

In the absence of a specific statutory prescription, the general rule is that an administrator must give adequate notice to permit an affected person to know how he might be affected, and to prepare himself adequately to make representations. The exact content of this requirement may be difficult to determine without litigation. Nevertheless, the effect of inadequate or no notice will be to render the delegate's actions void. On the other hand, a person may in some circumstances have an obligation to take reasonable steps to inform himself about proceedings, and certainly cannot use a formal defect in giving notice to attack the validity of proceedings which he in fact knew about. As in most areas of natural justice, the test is whether the alleged lack of notice is so unfair that the proceedings in question should be set aside by the courts.

It seems clear to this panel that the first panel not only did affect, but intended to affect Victus (and perhaps CANA) by its order. This is shown by the emphasis within the order itself on Victus having caused a breach of the Code. It is also shown by the inquiry about Mr. Webster's whereabouts so he could hear the oral decision, and by transmitting the decision later directly to Victus. Victus, at least, was therefore entitled to notice of the proceedings unless we find it had notice or ought to have informed itself of the proceedings. It is quite clear that Mr. Webster knew of the proceedings because he appeared to testify. However, what is required, to be fair to Victus, is notice that the proceedings might result in an order affecting their interests or requiring them to do, or refrain from doing, some act. Notice that proceedings were taking place between the Union and Junction over Mr. Turner's termination, without more, is in our view insufficient.

It appears the matter of Victus' involvement only emerged during the hearing. No doubt, the panel noted Mr. Webster's presence and, from that, presumed Victus' interest was represented. However, that presence as a mere witness is insufficient, in our view, to cure the defect in notice, given the ruling that followed.

Counsel for the Union argues that neither Victus nor CANA have established their status to seek reconsideration. We accept the proposition, from the *Unimelt* decision, [1986] Alta L.R.B.R. 229, that parties can only get status to reconsider a decision if they would have been given status to appear on the original matter. However, we find, given the way the Board ruled, they would have been granted such status by the original panel had they sought to appear.

The site obviously involves a lengthy contractual chain of authority, from Shell to Victus to CANA to Junction to Mr. Turner. Victus and CANA argue a contractual and property owner's right to control the site and exclude Mr. Turner for safety reasons. The Union, on the basis of the clauses of the Junction/CANA contract set out above, questions whether that contractual authority exists. The important point, in terms of notice of the first hearing, is that the first panel appeared to accept that Victus did somehow exercise the

authority to have Mr. Turner terminated, although in the panel's view for inadequate reasons. It appears from the memo of CANA issued after the hearing that it too seeks to bar Turner from the site. This leaves Junction in the position of having to comply with an order that gives it no assistance in overcoming the obstacles to site access imposed by CANA and Victus. To make an order that gives that assistance, as we believe the original panel intended to do, at least requires notice to those affected parties.

Counsel for Junction argues a second point, saying the Board misconstrued the meaning of section 145(1) (the statutory freeze) and its relationship to section 148. We believe the Board's jurisprudence on these sections is accurately set out in *General Teamsters Local Union 362 v Steinbeck Development Corporation Ltd. (Park N Jet)* [1986] Alta L.R.B. 489 (Lucas Vice-Chair) which is contrary to some of the views Junction advance. However, Junction raises a point which is significant. It suggests that the original panel's focus was to consider whether Victus had just cause for its decision to bar Mr. Turner. The proper question, he argues, is whether, given Victus' decision to bar Turner, *Junction* had just cause to terminate Turner. He argues, in Judicial Review terms, that the panel "asked itself the wrong question".

We find, given the direction the original panel took, that its proceedings were undermined by a lack of notice to, at least, Victus. As a result we reconsider and set aside the decision and direct that the matter be reheard. Given that result, the question of whether Junction had just cause for its termination of Turner, the extent of CANA or Victus' ability to insist on his termination or exclusion from the site, and the extent the Board can rectify any such actions by Victus or CANA necessary to restore Mr. Turner to his position with Junction, can all be canvassed on proper notice to the affected parties.