



**ALRB Cite:** IWA-Canada, Local 1-207 v. Spray Lake Sawmills (1980) Ltd. et al.  
[1989] Alta.L.R.B.R. 414

---

**SPRAY LAKE SAWMILLS (1980) LTD., Applicant and IWA-CANADA, LOCAL 1-207, Respondent. Board File: GE-00614. November 1, 1989.**

*Andrew C.L. Sims, Chair, W. Canning and G. Lucas, Q.C., Vice-Chair*

For the Applicant: E. Groody (Counsel)

For Respondent: D.A. Stewart, Q.C. (Counsel)

### **REASONS FOR DECISION**

**Andrew C.L. Sims, Chair:** Spray Lake Sawmills (1980) Ltd. applies for a reconsideration of a decision issued on October 20th 1989. The parties each gave written argument on the reconsideration request. A panel of the Board has considered the matter and decided there are insufficient grounds to justify reconsideration.

The earlier panel found the employer had breached section 147(a)(i), (viii) and (c) of the Code. As a result, the panel ordered certain remedies. The employer's arguments, advanced to justify reconsideration are, in summary:

- (a) That the employer has a right to a hearing on the issue of remedies which was not given.
- (b) That correction of substantial errors of fact or of law are necessary:
  - (i) because the Board's order that the employer cease failing to comply with the sections is ambiguous, chills the employer's right to free expression, and amounts to a gag order.
  - (ii) because the Board has no authority to compel a breach of the Code by making the employer violate s. 146.
  - (iii) because there is no connection between the remedy of a Union opportunity to address employees and the breaches found by the Board

(iv) because requiring the employer to post the Board's reasons at the worksite is unconnected to the breach and injects the Board into the organizing campaign. If the Board wants reasons posted, argues the employer, they should be fair and balanced, which they are not.

The employer asks that the Board amend its reasons and its remedies, and grant an interim stay of the directive that the Board's reasons be posted forthwith.

The Board does not conduct its proceedings like a criminal trial. In prohibited practice cases, the Board hears evidence and, following that evidence, gives the parties an opportunity to address all the issues raised by the application and the evidence. This includes an opportunity to present argument on the facts, the applicable law and any appropriate remedy sought or resisted. Unless the Board says otherwise, it does not first withdraw to consider the question of statutory breach and then reconvene to hear submissions on remedies once it decides the question of breach. To do so in all cases would, in the Board's view, be contrary to the interests of sound and expeditious labour relations, which the Board tries to promote.

Frequently, and no less in this case, an organizing campaign is going on. There is a competition for the allegiance of the employees. Delays tend to favour one side or the other, cause anger and frustration, and not infrequently, cause work stoppages or additional unfair labour practices by one side or the other.

The Board's practice has not been to split breach and remedy. The applicant does not suggest being misled about this. There is nothing to suggest the Board gave the applicant anything less than a full opportunity to address the panel on all issues extant.

The employer argues that the Board's directive is vague or ambiguous. The directive is a general one that the employer cease failing to comply with the breached sections. This is neither vague nor unreasonable. Section 16(1)(a) of the Code mandates such an order. The panel's reasons for decision identify the basis on which they found the employer to have breached the Code.

The allegation that this is a gag order on the employer is unpersuasive. Section 146(2)(c) protects the employer's right to free speech within certain reasonable parameters. If the employer stays within those parameters then there is no breach of the Code, and nothing in the Board's order to cease violating the Code would be offended. If the applicant is now suggesting that s. 146(2)(a) somehow violates the Charter, then the answer is the employer has not raised this suggestion in either a timely or a complete manner given the procedural rules concerning Charter challenges.

The Board finds the remedies set out in the directive are related to the breaches found. The employer's conduct, in simple terms, has interfered, in an unjustified way, with the employee's right to select freely trade union representation. The Board's job, on the basis of this finding, is to rectify the breach. One way to do

this is to let the employees know of the Board's ruling.

Another frequently used mechanism is to let the trade union address those employees, who choose to attend, at the workplace. This allows the Union an opportunity to counter the inappropriate influence exerted by the employer. This appears to the Board to be clearly and directly related to the breach. The applicant has not persuaded us that this is only appropriate after certification. That this may also be an appropriate remedy in a bargaining in bad faith case (Travois Holdings) does not support the argument that it is inappropriate in certification related cases.

The argument that the Board is directing the employer to commit the unfair labour practice of interfering in the formation of a trade union, and otherwise breach s. 146, holds no attraction. The employer is directed to allow a meeting on its premises. Section 146(2)(a)(iii) allows this anyway. Compliance with the Board directive does not breach the Code. That section is to protect employees from employer initiated actions, not Board ordered remedies.

The Board has assessed the sections of the reasons for decision which the employer says are unfair, and finds no basis to cause us to reconsider.

The employer asks for a clarification about employees scheduled to perform extra work on the Friday after work. The Union does not object to such a clarification. The matter is being referred to the original panel for that purpose, if still necessary.

The employer seeks an interim stay of the directive to post the reasons for decision. The Board dismisses that request in light of these reasons. The Board would also point out to the parties that a Board directive speaks, and continues to speak, once made. A request for reconsideration does not give any automatic right to act as if the Board Order were not in place. An applicant for reconsideration who wishes to stay compliance may apply for a reconsideration and a consequential interim or permanent stay. However, until a stay is granted the original directive stands and must, by law, be complied with. Many of the Board's remedies are time sensitive and given in volatile industrial relations circumstances. A mere request for reconsideration does not allow any party; union, employer or individual, to suspend compliance at will.