



**ALRB cite:** Darius L'Heureux v. Civic Service Union No. 52 and The City of Edmonton  
[1994] Alta. L.R.B.R. 150

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**DARIUS L'HEUREUX, Applicant and CIVIC SERVICE UNION NO. 52, Respondent and THE CITY OF EDMONTON, Intervenor. Board Files: GE-00796, GE-01017. April 7, 1994.**

*Deborah M. Howes, Vice-Chair, Douglas Mitchell and Raymond Drisdelle, Members*

For the Applicant: John Gill, Karen Trace, Darius L'Heureux

For the Respondent: Lyle Kanee, Nestor Makuch, Marion Leskiw

For the Intervenor: Roger Hofer, Brenda Harradence

**Remedies - s. 16(1) (L.R.C.) - Compensation - Union breach of fair representation duty delaying reinstatement of discharged employee by one year - Employee reinstated by arbitrator without back pay - Union not liable for lost employer pension contributions in year following termination or lost pension value due to employee withdrawal of pension funds.**

**Remedies - s. 16(1) (L.R.C.) - Compensation - Interest - Union objecting to paying interest on vacation pay accruing at end of work year - Objection dismissed - Board estimating interest to avoid detailed calculations.**

*In previous proceedings the Board found that the Union had twice breached its duty to fairly represent its member (see [1991] Alta. L.R.B.R. 736 and [1993] Alta. L.R.B.R. 556). As a result, the member was reinstated without back pay one year later than he otherwise would have. The Board ordered compensation for the one year's lost pay and benefits, including pension losses, with interest. Interest was awarded based on half the lost salary, to reflect the fact that it accrued over the year of unemployment. The parties could not agree on the amounts of compensation and applied to the Board to settle its compensation order.*

*The Board dismissed the Union's objection that interest should not accrue on vacation pay until the vacation pay is earned, at the end of each year of service. The formula the Board adopted in its previous decision was a "rough and ready" approach designed to compensate more or less accurately while avoiding issues like wage changes, varying interest rates, and benefit accrual dates.*

*The Board also dismissed the complainant's claim for lost employer pension contributions in his first year of unemployment and lost pension value resulting from his withdrawal of pension funds after termination. The intent of the Board's 1993 decision was to compensate from the date the complainant might have been*

*reinstated by a timely grievance, not before. The lost employer contributions for his first year of unemployment are not compensable on this basis. The lost pension value resulted from the complainant's termination and his decision to withdraw pension funds shortly thereafter, not from the Union's breach.*

## **REASONS FOR DECISION**

**Deborah M. Howes, Vice-Chair:** These reasons flow from previous board decisions on two duty of fair representation complaints filed by Mr. Darius L'Heureux against Civic Service Union No. 52 ("C.S.U. 52"). See: *Darius L'Heureux v. C.S.U. Local 52 and City of Edmonton* [1991] Alta.L.R.B.R. 736 and [1993] Alta.L.R.B.R. 556.

### **I. The Issues**

In the two earlier decisions the Board found the union in breach of section 151. We directed C.S.U. 52 pay Mr. L'Heureux damages as a result of a breach of its duty of fair representation. The parties were unable to resolve all the outstanding matters and returned to the Board for decisions on two issues.

1. Interest on vacation pay.
2. Pension contributions attributable to the period between June 15, 1990 and May 5, 1991.

### **II. Interest on Vacation Pay**

The issue can be simply defined. Is Mr. L'Heureux entitled to interest on his vacation pay?

Mr. L'Heureux's counsel argues that interest should flow based on the formula directed in the 1993 decision. CSU 52's counsel argues that under the collective agreement vacation pay accrues at the end of the year for use with vacation leave in the following year. He submits that interest should not accrue before the end of the year during which the vacation pay is earned.

#### **1. The Facts**

The undisputed facts show Mr. L'Heureux earns six weeks paid vacation per year. In 1991 he was entitled to 20 days (from May 6, 1991), and in 1992 (before his reinstatement) he would have earned 10 days paid vacation.

## 2. Reasons

In 1993, the Board directed interest be paid on the sums awarded, which sums included vacation pay because Mr. L'Heureux was a salaried employee. The formula adopted by the Board for the calculation of interest was a rough and ready approach. It was meant to provide a flexible, basically accurate and easy to calculate method of determining interest. The purpose of using such a formula was to avoid having to calculate each amount owing and when it became due. It avoids dealing with issues like the effect of wage changes and varying interest rates.

The Union's argument, if accepted, would require the parties to examine the amount owing and the date it became due. This undermines the purpose of the approach to interest calculation the Board took in its earlier decision. The Board is satisfied that the interest formula, while not an exact calculation, adequately accounts for the different accrual periods. We direct that interest be paid on the vacation pay according to that formula.

## III. Pension

Counsel for Mr. L'Heureux claims damages to compensate Mr. L'Heureux for:

- a) the lost value of his pension resulting from the withdrawal of his pension after his termination on June 15, 1990 but not compensated in the interest award being \$1,568.26; and
- b) the loss of the employer's contribution to the pension plan during the period June 15, 1990 to May 5, 1991 being \$1,622.38.

Mr. L'Heureux's counsel begins from the premise of making Mr. L'Heureux whole. They argue that Mr. L'Heureux should not suffer a decrease in the value of his future pension because of the Union's conduct.

The Union's counsel argues that Mr. L'Heureux is entitled to neither. On the first issue he relies on the Board's 1993 decision that says the Board will not compensate Mr. L'Heureux for losses because of his lost Registered Retirement Savings Plan. Counsel says the lost value results from Mr. L'Heureux's decision to withdraw his pension, not from the Union's breach.

On the second issue, the Union's counsel submits Mr. L'Heureux was not awarded back pay for the first year by either the arbitration panel or this Board. As a result, he would not have received a matched employer contribution between June 15, 1990 and May 5, 1991. His loss of that first year's pay was not related to the Union's breach. Therefore, the Union can not be liable for lost employer contributions to the pension plan during that time.

## 1. The Facts

The only agreed facts before the panel on this matter are that Mr. L'Heureux transferred his pension to an Registered Retirement Savings Plan in June or July, 1990. From the facts previously before us, we note that Mr. L'Heureux was dismissed June 15, 1990. We found the Union first breached its duty in October-November, 1990.

## 2. Reasons

We agree with the Union's position on the pension matters. In our decision of November 30, 1993 the Board said at page 14:

Mr. L'Heureux would have been entitled to pension contributions, made by him and the City during the period May 6, 1991 to May 5, 1992. The parties did not argue the terms of, or restrictions imposed by, the pension plan for recovering prior service and the consequences of any such restrictions. It is appropriate they resolve the matter, if possible. We direct the parties to meet and attempt to resolve this matter, failing which, we shall make any further orders required. [*Emphasis added*]

At page 15 the Board went on to say:

Mr. L'Heureux has suffered considerable losses as a result of C.S.U. 52's breach in 1990. The loss of the use of his earnings, while at the same time having to withdraw money from his registered retirement savings plan to meet daily living expenses, has imposed an additional penalty on him. While we are not prepared to award damages to compensate for the loss of his registered retirement savings plan, we can and will award interest on the money he did not receive. [*Emphasis added*]

The Board's directives on remedy were intended to compensate Mr. L'Heureux from May 5, 1991, not before. In the 1993 decision we provided lengthy reasons for not compensating Mr. L'Heureux for the time June 15, 1990 to May 5, 1991. Those reasons apply equally to the pension contributions during the same time.

In addition, the lost value of Mr. L'Heureux's pension resulting from his decision to withdraw his pension in 1990 is related to his dismissal, not the Union's breach. Mr. L'Heureux withdrew his pension well before the Union missed the time limits on his grievance. The Union should not be held responsible for losses occurring from actions unrelated to the s. 151 complaints.

We therefore grant Mr. L'Heureux's claim for interest on vacation pay and dismiss his claim for pension adjustments.