

IN THE MATTER OF:

A COMPLAINT OF ALLEGED UNJUST DISMISSAL UNDER DIVISION XIV
- PART III, SECTION 240 OF THE *CANADA LABOUR CODE*, R.S.C. 1985,
c. L-2

BETWEEN:

Murray Bird,

RESPONDENT (COMPLAINANT),

- and -

White Bear First Nation,

APPLICANT (RESPONDENT).

APPEARANCES:

For the Applicant (Respondent),
White Bear First Nation:

Lee D. M. Reid

For the Respondent (Complainant),
Murray Bird:

Jacob R., Watters

BEFORE:

T. F. (Ted) Koskie, B.Sc., J.D., Adjudicator

DECISION DATE:

March 4, 2024

DECISION

[1] Murray Bird (“Bird”) lodged a complaint¹ (the “Complaint”) pursuant to section 240 of the *Canada Labour Code*, Part III (the “Code”) alleging that White Bear First Nation (“WBFN”) unjustly dismissed him from his employment effective December 4, 2014.

¹Complaint dated December 16, 2014

- [2] WBFN took issue with the Complaint.
- [3] Bird asked that the Complaint be referred to an adjudicator.
- [4] The Minister of Labour (Canada) appointed an adjudicator to hear and determine the Complaint.
- [5] On August 26, 2016, that adjudicator dismissed the Complaint.
- [6] Bird brought an application² to the Federal Court for judicial review of that decision.
- [7] On May 10, 2017, the Federal Court granted the application for judicial review and directed the matter to be returned for readjudication by a different decision-maker.
- [8] WBFN appealed the Federal Court's decision.
- [9] On March 9, 2021, the Federal Court of Appeal dismissed the appeal.
- [10] The Minister of Labour (Canada) appointed me as the adjudicator to rehear and determine the Complaint.
- [11] The relevant provisions of the *Code* are:

Powers of Board

16 The Board has, in relation to any proceeding before it, power

- (a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce such documents and things as the

²Under the *Federal Courts Act*, RSC 1985, c. F-7, s. 18.1

Board deems requisite to the full investigation and consideration of any matter within its jurisdiction that is before the Board in the proceeding;

- (a.1) to order pre-hearing procedures, including pre-hearing conferences that are held in private, and direct the times, dates and places of the hearings for those procedures;
- (a.2) to order that a hearing or a pre-hearing conference be conducted using a means of telecommunication that permits the parties and the Board to communicate with each other simultaneously;
- (b) to administer oaths and solemn affirmations;
- (c) to receive and accept such evidence and information on oath, affidavit or otherwise as the Board in its discretion sees fit, whether admissible in a court of law or not;

...

Complaint to inspector for unjust dismissal

240(1) Subject to subsections (2) and 242(3.1), any person

- (a) who has completed twelve consecutive months of continuous employment by an employer, and
- (b) who is not a member of a group of employees subject to a collective agreement,

may make a complaint in writing to an inspector if the employee has been dismissed and considers the dismissal to be unjust.

Time for making complaint

(2) Subject to subsection (3), a complaint under subsection (1) shall be made within ninety days from the date on which the person making the complaint was dismissed.

Extension of time

(3) The Minister may extend the period of time referred to in subsection (2) where the Minister is satisfied that a complaint was made in that period to a government official who had no authority to deal with the complaint but that the person making the complaint believed the official had that authority.

...

Reference to adjudicator

242(1) The Minister may, on receipt of a report pursuant to subsection 241(3), appoint any person that the Minister considers appropriate as an adjudicator to hear and adjudicate on the complaint in respect of which the report was made, and refer the complaint to the adjudicator along with any statement provided pursuant to subsection 241(1).

Powers of adjudicator

- (2) An adjudicator to whom a complaint has been referred under subsection (1)
 - (a) shall consider the complaint within such time as the Governor in Council may by regulation prescribe;

- (b) shall determine the procedure to be followed, but shall give full opportunity to the parties to the complaint to present evidence and make submissions to the adjudicator and shall consider the information relating to the complaint; and
- (c) has, in relation to any complaint before the adjudicator, the powers conferred on the Canada Industrial Relations Board, in relation to any proceeding before the Board, under paragraphs 16(a), (b) and (c).

Decision of adjudicator

(3) Subject to subsection (3.1), an adjudicator to whom a complaint has been referred under subsection (1) shall

- (a) consider whether the dismissal of the person who made the complaint was unjust and render a decision thereon; and
- (b) send a copy of the decision with the reasons therefor to each party to the complaint and to the Minister.

Limitation on complaints

(3.1) No complaint shall be considered by an adjudicator under subsection (3) in respect of a person where

- (a) that person has been laid off because of lack of work or because of the discontinuance of a function; or
- (b) a procedure for redress has been provided elsewhere in or under this or any other Act of Parliament.

Where unjust dismissal

(4) Where an adjudicator decides pursuant to subsection (3) that a person has been unjustly dismissed, the adjudicator may, by order, require the employer who dismissed the person to

- (a) pay the person compensation not exceeding the amount of money that is equivalent to the remuneration that would, but for the dismissal, have been paid by the employer to the person;
- (b) reinstate the person in his employ; and
- (c) do any other like thing that it is equitable to require the employer to do in order to remedy or counteract any consequence of the dismissal.

[12] The parties negotiated—and confirmed with me—a settlement of the Complaint.

[13] Because of the above, I:

- a) dismiss Bird's complaint; and

- b) order there shall be no award of costs in favour of either party.

Dated at Saskatoon, Saskatchewan, on March 4, 2024.



T. F. (TED)KOSKIE, B.Sc., J.D.,
ADJUDICATOR