

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:

Dwayne Stonechild

BEFORE:

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

INTERIM DECISION DATE:

August 30, 2023

INTERIM DECISION

[1] Within my decision of February 22, 2023, I found:

[49] In normal circumstances, I would be inclined to grant the award of costs sought by WBFN. However, in light of Counsel for Bird's admission, my sense is that would not be fair and equitable. However, this does appear to be a case where it would be appropriate to make an award of costs against Counsel for Bird personally.

...

[54] This is a situation in which counsel, by his own admission, is solely to blame for the delay and added costs. It is a situation where costs are warranted, but also a situation in which it would be unjust to order Bird to pay the costs personally. As such, I am of the view the reasonable route is to order costs against Counsel for Bird.

...

[59] This is a particularly extreme instance of neglect and delay. This is an instance where a cost award should be made. However, to make it against Bird would be unjust. This is particularly true where Counsel for Bird has stated himself that he is solely to blame.

[60] It is appropriate to give Counsel for Bird notice a cost award is being contemplated and to give him an opportunity to make representations in connection therewith.

[61] I advise the parties I am contemplating an order that Counsel for Bird personally pay WBFN costs of \$5,000.00. Before making such an order, I grant leave to Counsel for Bird to advise me by March 31, 2023, that he wishes to make representations to me concerning same.

[2] On March 31, 2023, Counsel for Murray Bird, Dwayne Stonechild ("Stonechild") advised me that he wished to make representations concerning the potential award of costs payable by him to White Bear First Nation ("WBFN").

[3] I scheduled a hearing to address this preliminary matter relating to costs.

[4] Both Stonechild and WBFN filed written submissions.

[5] Stonechild's representations are aptly summarized by the last two paragraphs of his written submission. They read:

I respectfully submit that I did not purposefully or with intent cause costs to be incurred unreasonably, I was under the belief that the parties were going to try to negotiate a settlement and therefore avoid continuing costs and time of all parties, including those of Adjudicator Mr. Koskie. I believed this to be reasonable because of the decisions of the Federal Trial Court and the Federal Court of Appeal. I further believed this to be reasonable because of the settlement discussions with Mr. Howe and the expressed wish of both parties to avoid further costs.

Finally, I respectfully submit that I was having some personal health issues in 2022 that had myself out of the office. Because of these health issues, I request that should Adjudicator Mr.

Koskie decide to award costs on this application, that they be awarded against me and not my client, Mr. Bird.

[6] In response, WBFN argued:

2. In his written submissions, opposing counsel states that the justification for the delays at issue in this matter relate to (1) delayed settlement discussions and (2) personal health issues. For the reasons discussed below, it is respectfully submitted that neither justification excuses the delay or warrants a reduction in any cost award.

...

4. ... [T]he first conference call relating to the re-hearing of Mr. Bird's complaint (the "Re-Hearing") took place on January 21, 2022. Based on this call, the Re- Hearing was scheduled to begin on June 5, 2022.

5. ... WBFN's counsel tried to contact opposing counsel on several occasions between January 21, 2022 and May 13, 2022 but received no response. Certain of these attempts were for the purposes of exploring whether settlement discussions could take place.

6. On May 12, 2022 WBFN's counsel proposed that a mediation be scheduled to potentially avoid the time and expense of preparing for the Re-Hearing. No response was received and no mediation was scheduled.

7. On May 20, 2022, another conference call was arranged wherein the Re-Hearing was adjourned to the week of August 15, 2022 and a deadline of July 15, 2022 was set for the disclosure of documents, witness lists, and read-ins (collectively, the "Re-Hearing Documents"). It was not until two days after the July 15, 2022 deadline had expired that settlement discussions took place.

8. Settlement discussions could have taken place long before July 2022 and therefore do not excuse the delay.

9. While WBFN is sympathetic to opposing counsel and the health concerns referenced in his written submissions, it is unclear how these concerns were of a severity that prevented him from reaching out to WBFN to request an adjournment or accommodations. Had he done so, accommodations could have been arranged and WBFN might not have had to incur the substantial expense of preparing twice for a Re-Hearing that never took place.

10. WBFN has been diligent in preparing for the Re-Hearing and has complied with all filing deadlines. Further, WBFN was forced to bring the within application to compel disclosure of Mr. Bird's Re-Hearing Documents. All of these steps have resulted in substantial expense to WBFN which it respectfully submits ought to be compensated by awarding it \$5,000 in costs.

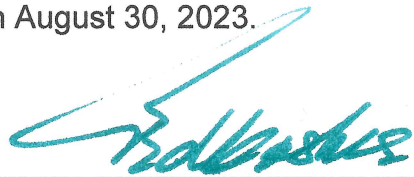
[7] I do not intend to repeat the analysis contained in my previous decision. Suffice it to say I rely upon same herein.

[8] I agree with and accept WBFN's arguments. I, too, am sympathetic to Stonechild and the health concerns he has referenced. However, Stonechild's inaction and delays spanned a considerable period of time. Much to his credit, he has taken full responsibility for same. However, I am not satisfied he has given a reasonable explanation for his failure to contact WBFN—or me for that matter—to request an adjournment or accommodations.

[9] As a result, I am satisfied Stonechild's inaction and delays have caused WBFN to incur expenses it would not otherwise have incurred. I find this warrants an award of costs to be paid by Stonechild to WBFN.

[10] I hereby order that Counsel for Bird, Dwayne Stonechild, personally pay WBFN costs of \$5,000.00.

Dated at Saskatoon, Saskatchewan, on August 30, 2023.



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