

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sunrise Poultry Processors Ltd. v. Aujla*,
2025 BCSC 701

Date: 20250328
Docket: S252563
Registry: New Westminster

Between:

Sunrise Poultry Processors Ltd.

Plaintiff

And

**Gurinder Aujla, Lakhbir Aujla, Harjinder Dhillon, Iqbal Dhillon,
Palwinder Dhillon, Mandeep Kaur Gill, Raveen Kehal, and
Ravinder Bobby Kehal**

Defendants

Before: The Honourable Justice Ahmad

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

D.E. Gruber
E.W. Hulshof
(February 28, 2025 only)

Counsel for the Defendants:

C.D. Drinovz

Place and Date of Hearing:

Vancouver, B.C.
February 28, 2025

Place and Date of Judgment:

Vancouver, B.C.
March 28, 2025

I. Introduction

[1] Prior to December 2022, the defendants were employed by the plaintiff, Sunrise Poultry Processors Ltd. (the “Employer”), in the sanitation department of its poultry processing plant. Their employment was subject to the terms of a collective agreement (the “Collective Agreement”) between the Employer and United Food and Commercial Workers, Local 1518 (the “Union”), of which the defendants were members.

[2] On the basis of a private investigation conducted in 2022, the Employer concluded that the defendants had engaged in what it describes as "a pattern of time-theft" by using one another's swipe cards to create the false impression that another defendant was working when, in fact, they were not. As a result, on November 20, 2022, the Employer terminated all of the defendants from their employment.

[3] The Union grieved the terminations under the Collective Agreement. The terminations were upheld.

[4] The Employer did not file a grievance with respect to any claims against the defendants or the Union. However, in March 2024, it commenced this action to recover losses it claims resulted from the alleged “time-theft”, including remuneration it paid to the defendants for hours they did not work. Causes of action pleaded by the Employer include misrepresentation, breach of the Collective Agreement (defined and referred to in the notice of civil claim as the Employment Agreement), unjust enrichment, conspiracy, and fraud.

[5] The defendants argue that this Court has no jurisdiction over the action. They say that, in light of the Collective Agreement, the matters and issues raised in the action are properly subject to the exclusive jurisdiction of labour tribunals subject to the *Labour Relations Code*, R.S.B.C., c. 244 (the “Code”).

[6] On this application, the defendants seek a declaration to that effect and an order to strike the action for want of jurisdiction.

II. The Contractual and Legislative Framework

The Collective Agreement

[7] At all material times, the Union was (and remains) the certified representative of a bargaining unit described in Article 2.01 of the Collective Agreement as:

all regular employees [of the Plaintiff] excluding executive staff, sales and office staffs, supervisors, management, quality control and buyers with respect to wages, hours of work and terms and conditions of employment.

[8] There is no dispute that during their employment, the defendants were members of the Union and the bargaining unit.

[9] Under the Collective Agreement:

- a) Article 9.13 provides that payment of wages shall be received for all time marked on the basis of the agreed remuneration for each minute of work performed;
- b) Article 12.03 provides for the payment of wages owing on Company Time;
- c) Article 3.01 provides an expansive section relating to “Management Rights” of the Employer whereby the "management of the plant and direction of the working forces, including the right to hire, suspend, discharge for just cause... are vested exclusively in the [Employer];
- d) Article 11 provides a comprehensive and binding grievance procedure for the resolution of all disputes under the Collective Agreement, including a three-step process under Article 11.02 for the "adjustment of disputes or grievances". Step three of that process provides as a final step that, "Any disagreement, grievance or dispute arising under this [Collective Agreement] which is not settled to the satisfaction of either the Union or the Company..." shall be determined by the Arbitration Board.

The Labour Relations Code

[10] The *Code* governs employer-union relationships in British Columbia. It provides:

- a) Pursuant to s. 48, a collective agreement is binding on the union, the employer, and "every employee of an employer who has entered into it and who is included in or affected by the agreement";
- b) Pursuant to s. 89, the board has the "authority necessary to provide a final and conclusive settlement of a dispute arising under the collective agreement", including under section 89(a), to:
 - “make an order setting the monetary value of an injury or loss suffered by an employer ... and directing a person to pay all or part of the amount of that monetary value.”; and
- c) Sections 136 and 139 set out the exclusive jurisdiction of the board. Pursuant to s. 136, that "the board has and must exercise exclusive jurisdiction to hear and determine an application or complaint under this Code and to make an order permitted to be made", including a "matter in respect of which the board has jurisdiction under [the] Code".

III. Issue

[11] In the circumstances I have described and given the legal framework, the issue to be determined is:

- a) Does this court have the jurisdiction to resolve the Employer’s claim for damages allegedly caused by the defendants’ conduct while they were covered by the Collective Agreement, or
- b) Is the dispute within the exclusive jurisdiction of the board established under the *Code*?

IV. Discussion and Analysis

A. The *Weber* analysis

[12] In *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 and its companion decision in *New Brunswick v. O'Leary*, [1995] 2 S.C.R. 967, the Court considered the same questions.

[13] In *Weber*, having considered and rejected the possibility of concurrent overlapping jurisdiction of the courts and labour tribunals, the Court adopted an exclusive jurisdiction model whereby "if the difference between the parties arises from the collective agreement, the claimant must proceed by arbitration and the courts have no power to entertain an action in respect of that dispute. There is no overlapping jurisdiction": *Weber* at para. 50.

[14] In determining whether the difference between the parties "arises from the collective agreement", two elements must be considered: (a) the dispute; and (b) the ambit of the collective agreement; *Weber* at para. 51.

[15] In respect of the first element, the Court in *Weber* stated:

52 In considering the dispute, the decision-maker must attempt to define its "essential character" to use the phrase of La Forest J.A. in *Energy & Chemical Workers Union, Local 691 V. Irving Oil Ltd.* (1983), 148 D.L.R. (3d) 398 (N.B.C.A.).... In the majority of cases the nature of the dispute will be clear; either it had to do with the collective agreement or it did not. Some cases, however, may be less than obvious. The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement.

...

54 This approach does not preclude all actions in the courts between employer and employee. Only disputes which expressly or inferentially arise out of the collective agreement are foreclosed to the courts...

[Added emphasis.]

[16] As the Court noted at para. 53:

Because the nature of the dispute and the ambit of the collective agreement will vary from case to case, it is impossible to categorize the classes of case that will fall within the exclusive jurisdiction of the arbitrator...

[17] However, the court has been found to lack jurisdiction in other decisions, both of this Court and of labour tribunals, involving disputes and claims similar to the ones raised in the action.

[18] In *Maple Ridge – Pitt Meadows School District No. 42 v. CUPE, Local 703*, 81 LAC (4th) 92, 1999 CanLII 20288 (BC LA) [*Maple Ridge School District*], the employee was alleged to have taken secret profits from a contractor in the sum of \$70,000, for which he was terminated. The union grieved the termination. The employer claimed recovery of monies from both the union and the employee.

[19] In respect of its jurisdiction to determine the latter grievance, the arbitrator considered both *O'Leary* and *Weber*. Referring to *Weber*, the arbitrator concluded that the employer's grievance to seek recovery of monies was "undeniably 'based on the master-servant relationship' (or, in more modern terms, the employer-employee relationship)": *Maple Ridge School District* at para. 22. More specifically, the arbitrator concluded that "the [employer's] obligation to pay wages and benefits as provided in the collective agreement; and [the employee's] corollary duty of fidelity in the performance of the work for which he was in receipt of wages and benefits", was at the "very core of the employer-employee relationship".

[20] Also relevant to the finding on jurisdiction was the fact that the issues in dispute of the disciplinary consequences, (i.e. the termination) and the remedial consequences (i.e. the claim for compensation) of the employee's alleged transgression were the same. The arbitrator concluded that:

24 ...Those facts and the parties' grievances, gave rise to arbitral jurisdiction over the just-cause disciplinary standard, and over the operation of the collective agreement generally. Thus, the differences or disputes fall within Section 84(2) of the *Labour Relations Code*, and, in the words of McLachlan J., "... there is no room for concurrent (court) proceedings".

[21] In *Conestoga College v. Ontario Public Service Employees Union*, [2009] OLA No 143, 2009 CanLII 12795 (ON LA) [*Conestoga College*], the labour tribunal considered its jurisdiction to make an award against an employee who was paid \$70,000 to pursue higher education pursuant to the leave provisions under a

collective agreement, but who did not enrol in the program for which leave had been given. The employer demanded the return of the \$70,000 as monies received to which the employee was not entitled. There was no allegation that the union had breached the collective agreement.

[22] In considering its jurisdiction, the tribunal cited several examples of similar cases in which the arbitrators exercised exclusive authority to award damages against individual employees at pages 12 and 13:

1. where an employee was found to have improperly claimed and received room and board allowance to which he was not entitled under the collective agreement, see *Electrical Power Systems Construction Association and Ontario Allied Construction Trades Council et al.* [Div. Ct.] *supra*;
2. for damages for negligence in the operation of an employer's vehicle, see *Ontario (Attorney General) v. Bowie*, *supra*;
3. for recovery of overpayment of sick leave, see *Belleville (City) and C.U.P.E., Local 907*, *supra*;
4. for monies improperly received as a result of a conflict of interest, see *School Board District No. 42 (Maple Ridge-Pitt Meadows) and C.U.P.E. Local 703*, *supra*;
5. for damages for the negligent performance of duties, see *Dubord & Rainville Inc. and M.U.N., Local 7625*, *supra*;
6. to recover overpayment of wages, *Cambridge Memorial Hospital and SEIU*, *supra*.

[23] The tribunal noted that all of those cases were premised upon the principles established in *Weber* and summarised in *Dubord and Rainville and M.U.N., Local 7625*, 1998 CanLII 30126 (QC LA), at page 65 [*Dubord*] as follows:

It follows that it is not the jurisdictional basis of a claim or a matter of whether that claim can stand independently of a collective agreement on some legal basis outside [of] the collective agreement that will be determinant for purposes of jurisdiction. It will, rather, be the context out of which the claim arises and where that context is a collective agreement relationship and the claim bears some attachment, even inferentially, to that relationship, notwithstanding that it may stand on its own on a legal basis outside [of] the collective agreement, it [may] be considered as falling within the exclusive domain of an arbitrator. Thus, a claim of an employer against an employee arising out of the employer/employee relationship where that relationship is governed by a collective agreement and where there are provisions in that collective agreement to which the claim may relate, even inferentially, will be for a tribunal of arbitration and not the courts of civil jurisdiction to determine.

[Emphasis added.]

[24] Decisions of this court which confirm the exclusive jurisdiction of labour tribunals in other similar circumstances include: *Gill v. Morgason (Harbour Link)*, 2021 BCSC 874, and *Unifor v. Brinks Canada Ltd*, 2022 BCSC 2061 [*Unifor*]. The employers' claims against the unionised employees in those cases were: in *Gill*, for defamation arising from comments allegedly made by the plaintiff to another employee, and in *Unifor* for repayment of monies allegedly stolen by the employee in the course of his employment duties.

[25] Having reviewed the jurisprudence in the area, the court in *Unifor* concluded that the essential character of the dispute was "whether the Grievor had breached his duty of fidelity to the respondent by committing, or being involved in, the alleged robberies": see *Unifor* at para. 91.

[26] From the above authorities, four important themes emerge that are directly relevant on this application:

- a) The exclusive jurisdiction of labour tribunals is not limited to disputes which expressly arise out of a collective agreement; disputes that inferentially relate to, or arise from, a collective agreement will also invoke the exclusive jurisdiction of the labour tribunal: *Weber* at para. 54; *Conestoga College* at p. 65;
- b) All collective agreements impose an implied duty of fidelity in the performance of work, a claim for breach of that duty, and the consequent damages is a claim under the collective agreement: *Unifor* at para. 95; *Maple Ridge School District*, at para. 22 and 34;
- c) The overlap of issues between a termination of employment and a remedial claim for compensation based on an employee's alleged transgression will support arbitral jurisdiction over the operation of the collective agreement: *Maple Ridge School District*, at para. 24; and

- d) The fact that an employer's claim against an employee can stand on its own as a legal basis outside of the collective agreement will not be determinative of jurisdiction: *Conestoga College* at page 13, citing *Dubord* at page 65.

[27] In light of that authority, I have no difficulty concluding that the essential character of the dispute raised in the action arises from the defendants' employment under the Collective Agreement.

[28] Specifically:

- a) The Employer relies on express terms of the Collective Agreement, being articles 9.13 and 12.03 regarding the bases on which remuneration was to be paid as well as what it refers to as the implied term of the Collective Agreement that the defendants would be paid only for hours actually worked: NOCC, paras. 13-14;
- b) The Employer relies on a swipe card policy which the Employer claims forms part of the Collective Agreement: NOCC, paras. 16-17;
- c) The Employer relies on the defendants' implied duty of good faith and, moreover, that the defendants' alleged conduct amounted to a breach of that duty: NOCC, para. 25;
- d) There is a direct overlap between the alleged conduct giving rise to the terminations of the defendants' employment, which was grieved by the Union under the Collective Agreement, and the alleged conduct giving rise to the Employer's claim for compensation;
- e) The terminations were made as an exercise of the Employer's management rights expressly established by the Collective Agreement;
and
- f) The alleged conduct is said to have occurred in the workplace during work hours.

[29] On the basis of the above, I am satisfied that the dispute raised in the action arises from the interpretation, application, administration, or violation of the Collective Agreement. The first factor of the *Weber* analysis is satisfied.

[30] I now turn to the second factor: the ambit of the Collective Agreement.

[31] In *Bisailon v. Concordia University*, 2006 SCC 19, the Court discusses that that factor at para. 32 as follows:

At the second stage, it must be determined whether the factual context so identified falls within the ambit of the collective agreement. In other words, it must be determined whether the collective agreement implicitly or explicitly applies to the facts in dispute...

[32] In this case, the scope of the Collective Agreement is broad:

- a) The bargaining unit, of which the defendants were members, is described at article 2.01 as “all regular employees [of the Employer] ... with respect to wages, hours of work and terms and conditions of employment”;
- b) The scope of management rights contemplated by article 3.01 includes that the "management of the plant and direction of the working forces, including the right to hire, suspend, discharge for just cause... are vested exclusively in the [Employer]”; and
- c) Significantly, the grievance procedure set out at article 11.02 provides for the resolution of “any disagreement, grievance or dispute arising under [the Collective] Agreement”.

[33] Moreover, as set out above, articles 9.13 and 12.03 of the Collective Agreement expressly contemplate the bases on which remuneration is to be paid. The payment of remuneration is the very issue in dispute in the action.

[34] I am easily satisfied that the Collective Agreement implicitly or explicitly applies to the facts in dispute.

[35] Having concluded that both *Weber* factors are satisfied, that is, that the dispute raised in the action arises from the Collective Agreement, on the authority of *Weber*, it follows that the labour tribunal has the exclusive jurisdiction to determine the matter.

[36] However, the Employer suggests that the analysis should not end there. Relying on the comments in *Bisailon*, at paras. 39-40, it raises the concern that the labour tribunal might not have what the court refers to as the *in personam* jurisdiction.

[37] The question is, having concluded that the dispute arises from the Collective Agreement, is there any basis on which this Court should nonetheless accept jurisdiction to determine the action? I turn to my consideration of that issue.

B. Is there some other basis on which the Court should accept jurisdiction of the action?

[38] As I understand the Employer's position, the issue is not that the subject matter of the dispute does not arise from the Collective Agreement. Rather, the Employer suggests that the Collective Agreement and, in particular, the grievance procedure set out in the Collective Agreement, may not bind the Employer or the defendants.

[39] In that regard, the Employer argues that the express language of the Collective Agreement grievance procedure is limited to grievances made by employees. It does not, according to the Employer, expressly contemplate Employer grievances.

[40] The Employer also notes that the default grievance procedure set out in s. 84(3)(b) of the *Code* contemplates the resolution of "differences ari[sing] between the parties". As the defendants are not "parties" to the Collective Agreement (the Employer and the Union are), the Employer suggests that the defendants might not be bound by the resolution process. In addition, because the defendants are no

longer employees, the Employer raises the possibility that neither the Collective Agreement, nor the default provisions of the *Code* apply to them.

[41] In my view, the issues raised by the Employer confuse the court's task on this application to determine jurisdiction, on one hand, with the possible outcomes that may be available to the trier of fact and law who will ultimately determine the dispute, on the other hand. Indeed, if this Court does not have jurisdiction, as the *Weber* analysis dictates, the issue of whether a person, be it the Employer or the defendants, is bound by the grievance procedures of the Collective Agreement, is for the labour tribunal to exclusively decide.

[42] Section 139 of the *Code* provides, in part:

139 The board has exclusive jurisdiction to decide a question arising under this Code and on application by any person or on its own motion may decide for all purposes of this Code any question, including, without limitation, any question as to whether

(a) a person is an employer or employee,

...

(d) a person is or what persons are bound by a collective agreement,...

[43] Having concluded, based on the *Weber* subject matter analysis, that the labour tribunal has the exclusive jurisdiction to determine the dispute, this Court has no further jurisdiction to determine those issues. In my view, doing so would exceed the Court's jurisdiction and improperly tie the hands of the labour tribunal, which has the exclusive jurisdiction.

[44] Notably, in *O'Leary*, the Supreme Court of Canada has expressly considered the Employer's argument to oust the jurisdiction of the labour tribunal on the basis that the collective agreement's grievance procedure had no application to it. The argument was rejected.

[45] In *O'Leary*, the deeming provisions of s. 92(1) of the applicable *Public Service Labour Relations Act*, R.S.N.B. 1973, c. P-25, s. 92 inserted in every collective agreement a provision providing for final and binding arbitration "[w]here a difference arises between the parties relating to the...application or administration of this

agreement", a phrase the court described as "encompassing redress for a breach of the agreement by either party": *O'Leary* at para. 9.

[46] In that context, the Court described, and, as I said, rejected the argument to deny the labour tribunal's exclusive jurisdiction:

[9] ...the employer relies on the fact that Article 15 of the Collective Agreement refers only to employee grievances, however, this does not negate the broader language of section 92(1) of the Act which covers both parties. By implication, the employer must be able to grieve under the collective agreement.

[47] In this case, the *Code* contains similar deeming provisions. Section 84(2) provides that "Every collective agreement must contain a provision for final and conclusive settlement ... by arbitration or another method agreed to by the parties, of all disputes between the persons bound by the agreement respecting its interpretation, application, operation or alleged violation, including a question as to whether a matter is arbitrable". [Added emphasis]

[48] To the extent that a collective agreement does not include that provision, section 84(3)(b) operates to insert a provision that:

...if a difference arises between the parties relating to the dismissal or discipline of an employee, or to the interpretation, application, operation or alleged violation of this agreement, including a question as to whether a matter is arbitrable, either of the parties, without stoppage of work, may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference to arbitration ... which is final and binding on the parties and any person affected by it.

[Added emphasis.]

[49] As was the case in *O'Leary*, to the extent that the collective agreement's grievance procedure does not contemplate employer grievances (and I do not decide that point), the broader language in s. 84(3) of the *Code* covers both "parties". As such, "by implication, the employer must be able to grieve under the collective agreement."

[50] I do not accept that this argument gives rise to an issue that would oust the labour tribunal's jurisdiction.

[51] The same is true of the Employer’s position regarding the application (or potential non-application) of the grievance procedure to the defendants. The Employer did not, or was unable to, provide any authority to the contrary. Indeed, without deciding the point, I note that several of the authorities, including the decision in *Maple Ridge School District*, involve the labour tribunal's determination of a dispute involving former employees.

[52] Without any authority to the contrary, I am unable to conclude that the issues raised on this argument give rise to an issue that would oust the exclusive jurisdiction of the labour tribunal. To the extent that the application of the Collective Agreement’s grievance procedure to either the Employer or the defendants is an issue, it is for the labour tribunal to determine.

V. Conclusion

[53] Having concluded that the subject matter of the dispute raised in the action arises from the Collective Agreement, I find that the labour tribunal has the exclusive jurisdiction to determine the dispute.

[54] Accordingly:

- a) I declare that the Court is without jurisdiction over the action as pleaded in the notice of civil claim as it relates to the facts and circumstances subject to the exclusive jurisdiction of labour tribunals subject to the *Code*, and
- b) I make the order striking this application in its entirety for want of jurisdiction.

VI. Costs

[55] Costs of this application are awarded to the defendants.

“Ahmad J.”