

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Weston v. School District No. 22 (Vernon)*,
2025 BCSC 797

Date: 20250429
Docket: S58539
Registry: Vernon

Between:

Brad Weston

Plaintiff

And

**School District No. 22 (Vernon),
Christine Perkins in her Personal Capacity,
Gen Acton in her Personal Capacity,
Canadian Union of Public Employees (C.U.P.E.) Local 5523,
Gray Boisvert in his Personal Capacity, and
Kevin Tilley in his Personal Capacity**

Defendants

Before: The Honourable Justice S. Ramsay

Reasons for Judgment

The Plaintiff, appearing in person:

B. Weston

Counsel for Defendants, School District 22
(Vernon), Christine Perkins, and Gen Acton:

A. Edwards

Counsel for the Defendants, Canadian
Union of Public Employees, (C.U.P.E.)
Local 5523, Gray Boisvert and Kevin Tilley

M. Rozee

Place and Date of Hearing:

Kelowna, B.C.
February 12-14, 2025

Place and Date of Judgment:

Vernon, B.C.
April 29, 2025

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I. INTRODUCTION

[1] The plaintiff was terminated by his employer, the defendant School District No. 22 (Vernon) (“SD22”), in August 2020. The defendant Canadian Union of Public Employees (C.U.P.E.) Local 5523 pursued a grievance, but ultimately agreed to a settlement with SD22 before arbitration. The plaintiff did not agree with the settlement and objected; however, an arbitrator appointed under the collective agreement ruled the settlement was valid and enforceable. The plaintiff then pursued a complaint against the Union, its president, Gray Boisvert, and Union counsel, Kevin Tilly, which was dismissed by the B.C. Labour Relations Board. The plaintiff now claims damages in this Court arising out of (or related to) the termination and settlement.

[2] In separate applications, the defendants apply to strike or dismiss those parts of the plaintiff’s Amended Notice of Civil Claim (“ANOCC”) that relate to each of them. Given time constraints, only the following applications proceeded before me, each brought pursuant to Rule 9-5(1) on the basis that the court has no jurisdiction and the claims are an abuse of process:

- a) SD22’s application to strike the plaintiff’s claim for wage loss damages arising from his termination; and
- b) the application of the Union defendants (the Union, Mr. Boisvert, and Mr. Tilley) to strike the plaintiff’s claims for damages related to the handling and settlement of his grievance.

[3] The remaining applications, which I adjourned generally to be reset by the defendants, are SD22’s alternative application to dismiss the wage loss claim, and what can broadly be described as applications by SD22 and the defendant Christine Perkins to strike or dismiss the remaining claims in the ANOCC. I am not seized of those remaining applications.

[4] The plaintiff is not represented by legal counsel and appeared in person at the hearing. It was apparent that he did his best to follow applicable court rules and

procedures. For obvious reasons, the content of his written and oral submissions was not what one would receive from legal counsel. However, he was able to clearly articulate his position in response to the applications, even when he did not use precise legal terminology for the concepts he described. In the circumstances, I have given a generous interpretation to his submissions.

[5] The plaintiff raised some preliminary issues at the hearing, which I address below before turning to the substantive Rule 9-5(1) applications to strike.

II. PRELIMINARY ISSUES

A. Court processes and procedures

[6] The plaintiff asserts that the defendants' applications should be dismissed as vexatious, because they are a clear abuse of court processes and procedures. He provided two examples.

[7] First, in his response materials, the plaintiff objects to the manner in which this hearing was set. The parties resolved this issue before the hearing and did not argue it before me.

[8] Second, the plaintiff objects to the Union defendants bringing any application before they are served with and respond to the ANOCC. I do not agree that this bars the application. Rule 9-5(1) expressly states that an application may be brought "at any stage of a proceeding". An argument similar to that made by the plaintiff in this case was rejected by the Court of Appeal in *Boyd v. Cook*, 2016 BCCA 424, at para. 32.

[9] I cannot identify any other reason why the defendants' applications are an abuse of court processes and procedures, or are otherwise vexatious. There is no procedural reason why the Rule 9-5(1) applications cannot go ahead.

B. Evidence

[10] The plaintiff says he needs leave to obtain documentary evidence and to cross-examine the defendants' affiants, presumably to obtain evidence he will rely

on in response to the applications. I am not persuaded that there is any basis to make those orders for the purpose of the Rule 9-5(1) applications.

[11] In *Equustek Solutions Inc. v. Jack*, 2013 BCSC 882, at para. 6, the Court identifies factors that might support an order for cross-examination. None are present in the Rule 9-5(1) applications before me: no material facts are in issue, the cross-examination could not be relevant to an issue that may affect the outcome of the applications, and cross-examination will not elicit evidence that would assist in determining the issues.

[12] Similarly, the documents sought by the plaintiff have no potential relevance to the issues raised by the Rule 9-5(1) applications.

[13] I decline to order cross-examination or document production for the purpose of the Rule 9-5(1) applications. I express no view as to whether those steps might be appropriate or necessary for the purpose of the applications that did not proceed before me.

C. Other issues

[14] All other concerns of a procedural or preliminary nature raised by the plaintiff relate only to the other applications, and are not relevant to the Rule 9-5(1) applications before me. I express no opinion or decision regarding their merit.

III. BACKGROUND FACTS

[15] The facts relevant to the Rule 9-5(1) applications are not in dispute.

[16] The plaintiff worked for SD22 as a custodian from 2017 until his termination. On April 28, 2020, he went on a leave of absence. He was scheduled to return to work on August 4, 2020, but did not attend for his shift. SD22 terminated the plaintiff's employment on August 5, 2020.

[17] The Union filed a grievance relating to the termination. The grievance claimed that SD22 violated the collective agreement because it "used excessive discipline in unjust termination" of the plaintiff's employment. The grievance requested that the

plaintiff's employment be reinstated, that he be granted a leave of absence, and that he "be made whole".

[18] The arbitration of the grievance was cancelled when the Union and SD22 reached a settlement. The plaintiff did not agree with the settlement and refused to sign the settlement agreement, and the question of the validity and enforceability of the settlement agreement proceeded to an arbitration. On October 14, 2022, an arbitrator appointed under the *Labour Relations Code*, R.S.B.C. 1996, c. 244 [Code], found the settlement agreement valid and enforceable: *Board of Education of School District No. 22 (Vernon) v. Canadian Union of Public Employees, Local 5523*, [2022] B.C.C.A.A.A. No. 147, 2022 CanLII 136081.

[19] On October 22, 2022, the plaintiff filed a complaint with the Labour Relations Board under s.12 of the *Code*, alleging that the Union had acted in bad faith in its representation of him, including in reaching the settlement agreement. The Board dismissed the plaintiff's s. 12 complaint on April 5, 2023: *Weston v. Canadian Union of Public Employees, Local 5523 – Vernon School District Employees*, 2023 BCLRB 53.

[20] The plaintiff did not pursue a reconsideration or judicial review of the arbitrator's decision or the Board's decision.

[21] The plaintiff commenced this proceeding on May 3, 2024, and filed the ANOCC on May 9, 2024. While the legal basis of his claim is not clearly articulated in the ANOCC, it is apparent from Part 1 (Statement of Facts) and Part 2 (Relief Sought) that, broadly speaking, the plaintiff seeks various damages related to the circumstances of his termination and grievance.

IV. ISSUES

[22] As stated above, SD22 and the Union defendants each apply to strike parts of the ANOCC pursuant to Rule 9-5(1), for two reasons.

[23] First, they say that the court has no jurisdiction over the plaintiff's claims, because the plaintiff's claims for wage loss damages (sought against SD22) and for damages related to the handling and settlement of his grievance (sought against the Union defendants) are in the exclusive jurisdiction of the Labour Relations Board.

[24] Second, SD22 and the Union defendants say the plaintiff's claims should be struck as an abuse of process, because they have already been brought and decided in another forum.

[25] The plaintiff says the court has jurisdiction, and that his claims are not an abuse of process. However, if I conclude that his claims as pleaded should be struck, he asks for leave to further amend the ANOCC to address any pleadings issues I identify.

[26] For the reasons that follow, I conclude that the court has no jurisdiction over the wage loss and grievance claims, and they must therefore be struck. I would also strike the claims on the ground that they are an abuse of process, because they have already been resolved by the settlement and the decisions of the arbitrator and the Board. Finally, I conclude there is no possibility of saving the struck claims by an amendment to the pleadings. I therefore strike the claims without leave to the plaintiff to amend them.

A. Jurisdiction

[27] The applicable law regarding the court's jurisdiction in the labour relations context is well-settled. The principles are set out by the Supreme Court of Canada in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, 1995 CanLII 108. The question I must determine is whether the plaintiff's claim, "in its essential character, arises from the interpretation, application, administration or violation of the collective agreement": *Weber* at para. 52. If the answer is yes, the court does not have jurisdiction and the plaintiff's claim must be struck.

[28] The plaintiff says the essential character of his wage loss claim against SD22 and of his claims against the Union defendants does not arise from the

interpretation, administration, or violation of the collective agreement. He relies on various legal authorities from jurisdictions other than British Columbia. However, none of the authorities the plaintiff relies on assist his position, for one or more of the following reasons:

- a) the case was decided in a labour relations context that is different from the regime in British Columbia;
- b) the case was decided outside of the labour relations context;
- c) the decision has been overturned on appeal; and/or
- d) the plaintiff is relying on dissenting reasons of an appeal decision.

[29] Because the determination of jurisdiction turns on the essential character of the claims in question, I will address the wage loss claim against SD22 and the claims against the Union defendants arising out of the grievance and settlement separately.

1. Claim against SD22

[30] *Weber* clearly establishes that if the essential character of a dispute comes within the ambit of a collective agreement in the labour relations context, it falls outside the court's jurisdiction: at para. 54.

[31] Here, the collective agreement comprehensively addresses the plaintiff's rights and remedies relating to termination of his employment. In the ANOCC, the plaintiff seeks damages against SD22 "to be made whole again for my unjust termination and firing without notice or cause" (Part 2, para. 2). Reading the ANOCC as a whole and informed by the plaintiff's submissions, it is clear that the essential character of the dispute underlying the wage loss claim against SD22 is whether SD22 breached the collective agreement by terminating the plaintiff and, if so, the plaintiff's remedy for the breach. I can think of no clearer example of a claim that, in its essential character, arises from the application or violation of the collective agreement.

[32] The plaintiff seeks to distinguish the essential character of the wage loss claim in various ways, such that the court would have jurisdiction. He suggests the wage loss claim is different because the grievance sought arbitration and reinstatement of his employment, which he is not seeking in this action. This argument does not assist him, because the essential nature of the dispute—whether SD22 breached the collective agreement and, if so, the plaintiff’s entitlement to a remedy—remains the same even if he is seeking a different remedy in this Court.

[33] The plaintiff also suggests that the wage loss claim can be distinguished if his claim is amended to clarify that he is not seeking to be “made whole”, but instead is seeking to recover whatever amount is owing to him arising from his termination. The difficulty with this argument is that even if those were distinct claims—which they do not appear to be—any amount “arising from his termination” necessarily arises from the application of the collective agreement. The essential character of the claim remains the same.

[34] The plaintiff also points to the Union’s settlement of his grievance as a distinguishing feature of the wage loss claim. He says SD22 has not paid the settlement funds to him, and that this Court has jurisdiction to enforce the settlement agreement. Enforcement of the settlement agreement is not something that is pleaded in the ANOCC. In any event, even if it were pleaded, I consider enforcement of the settlement to also come within the ambit of the collective agreement and the *Code*, such that the court has no jurisdiction. In fact, the arbitrator expressly retained jurisdiction over this issue in her decision:

iv) The arbitrator retains jurisdiction pursuant to s.92(2) of the *Code* to bring the dispute to a full conclusion.

58. I retain the necessary jurisdiction to address this matter if there are issues in executing the terms contained in the Settlement Agreement to bring this dispute to a full conclusion.

[35] For these reasons, I conclude that the essential character of the wage loss claim against SD22 is within the exclusive jurisdiction of the Labour Relations Board. This Court therefore has no jurisdiction over the wage loss claim, and the relief sought in Part 2, para. 2 of the ANOCC must be struck.

[36] SD22 says that if Part 2, para. 2 is struck, certain allegations of fact in Part 1 of the ANOCC must also be struck. I agree that the words “without cause and without notice” in Part 1, paragraph 10, clearly relate to matters over which the court has no jurisdiction. I therefore strike those words from the ANOCC. However, I consider it possible that the remaining Part 1 content identified by SD22 could also be material to other remaining claims against SD22. I therefore do not strike any of the other paragraphs proposed by SD22 at this time, but without prejudice to the SD22’s ability to renew that application if warranted by future amendments to the claim.

2. Claims against the Union Defendants

[37] The plaintiff seeks damages against the Union for “false / fraudulent representation causing harm” (ANOCC Part 2, para. 7) and against Mr. Tilley and Mr. Boisvert personally for harm caused by “knowingly misrepresenting / misleading” the plaintiff and accepting a settlement offer that was not in the plaintiff’s interests, without the plaintiff’s knowledge, consent, or agreement (Part 2, para 11).

[38] The Union defendants say these claims fall squarely within the jurisdiction of the Labour Relations Board, established by s. 12 (duty of fair representation) and s. 13 (procedure for fair representation complaint) of the *Code*. Section 12(1)(a) of the *Code* provides that the Union “must not act in a manner that is arbitrary, discriminatory or in bad faith” in representing an employee. Section 13 establishes the procedure for resolving a complaint that s. 12 was breached. The Board has exclusive jurisdiction over s. 12 complaints pursuant to s. 136.

[39] The plaintiff says the essential nature of the claims he is making in this case are different from a s. 12 complaint. He says he has not made and does not intend to make an “acted in bad faith” or “bad faith representation” claim in this proceeding. Instead, the plaintiff emphasizes that he is only seeking damages from the Union, Mr. Tilley, and Mr. Boisvert for their false and/or fraudulent representation of him in the settlement of his grievance.

[40] The difficulty with the plaintiff’s argument is that jurisdiction is based on the essential character of the claim, not the words used to describe the claim (*Ancheta v. Joe et al.*, 2003 BCSC 93 at para. 61) or the legal characterization of the claim (*Speckling v. Local 76 of the Communications, Energy and Paperworkers’ Union of Canada*, 2009 BCCA 258 at para. 56). Nothing in the *Code* suggests that s. 12 should be narrowly interpreted to only apply to complaints that use the specific words “arbitrary”, “discriminatory”, or “bad faith”.

[41] The language of s. 12 is sufficiently broad to include allegations of fraudulent behaviour in the union’s representation of an employee. This interpretation is consistent with the Board’s practice of considering fraud allegations in s. 12 complaints: see e.g. *SL v. B.C. Government and Service Employees’ Union*, [2014] B.C.L.R.B.D. No. 183, 2014 CanLII 60749 (B.C.L.R.B.); *Fox v. Board of Education of School District No. 10 (Arrow Lakes)*, 2022 BCLRB 4; *Mark Buchanan*, 2024 BCLRB 176.

[42] Reading the ANOCC as a whole and informed by the plaintiff’s submissions, I am satisfied that regardless of the words used, the essential character of the claims against the Union defendants is that they acted improperly in their representation of the plaintiff, contrary to s. 12 of the *Code*. The plaintiff’s allegation of false or fraudulent representation describes *the nature of* the alleged “arbitrary, discriminatory or bad faith” representation. However, the allegation of fraud does not change my decision that the essential character of the dispute arises from the Union’s duties owed to the plaintiff under *the Code*. The dispute is therefore outside this Court’s jurisdiction.

[43] The fact that the plaintiff has named Mr. Tilley and Mr. Boisvert personally does not change my decision. The essential character of the plaintiff’s claim against Mr. Tilley and Mr. Boisvert is no different than the claim against the Union—namely, that they acted improperly in their representation of him, contrary to s. 12 of the *Code*. This arises directly out of their representation of him in the grievance and

settlement. In those circumstances, this Court has no jurisdiction over the claim: *Ancheta* at para. 97.

[44] For these reasons, I conclude that the essential character of the claims against the Union defendants are within the exclusive jurisdiction of the Labour Relations Board. This Court therefore has no jurisdiction, and the relief sought in Part 2, paras. 7 and 11 of the ANOCC must be struck.

[45] The Union defendants say that if Part 2, paras. 7 and 11 are struck, certain allegations of fact in Part 1 of the ANOCC must also be struck. Unlike the paragraphs that SD22 proposed to be struck from Part 1, the paragraphs identified by the Union defendants could not be material to any of the remaining claims in the ANOCC. Further, all of the factual allegations in question relate to matters over which the court has no jurisdiction, and some of them expressly contradict findings made by the arbitrator and the Board. For these reasons, I order that the following must be struck from Part 1:

- a) Paragraphs 12, 13, 14, 17, 18, and 20, in their entirety.
- b) The following words from the first sentence of Paragraph 19:
 - i. “of his own”; and
 - ii. “without my knowledge”.
- c) The second and third sentences of Paragraph 19, in their entirety.

3. Section 137(2) – risk of immediate harm

[46] Finally, I do not agree with the plaintiff’s suggestion that s. 137(2) of the *Code* gives the court jurisdiction in this case, despite my findings above. Section 137(2) creates a narrow exception to the Board’s exclusive jurisdiction “so as to ensure that the Court may address situations where there is a risk of immediate danger of serious injury to an individual or physical damage to property”: *Nagra v. Coast Mountain Bus Company*, 2023 BCSC 2312 at para. 55. While the plaintiff alleges

that he has suffered serious harm and hardship, there is no evidence that he or anyone else is in any immediate danger in this case. This case is not the type of exceptional situation where the court has jurisdiction over something that would otherwise be in the exclusive jurisdiction of the Board.

B. Abuse of Process

[47] If I am wrong and the court does have jurisdiction, I agree that the claims made in Part 2, paras. 2, 7, and 11, and the paragraphs from Part 1 identified in paragraphs 36 and 45 above, should be struck as an abuse of process of the court, pursuant to Rule 9-5(1)(d).

[48] The plaintiff's wage loss claim against SD22 is the subject of a binding settlement agreement. Much of the plaintiff's submissions focused on the validity of the settlement. I acknowledge that the plaintiff is unhappy with the settlement. It may be that he would not have agreed to the settlement, as he asserts. However, under the *Code* and the collective agreement, the Union had exclusive conduct of the grievance and had the right to settle it, even without the plaintiff's agreement: *Pereira v. Dexterra Group Inc.*, 2021 BCSC 1484 at para. 28. Enforceability of the settlement was considered and decided by the Arbitrator.

[49] In these circumstances, the plaintiff's wage loss claim against SD22 is an attempt to relitigate a dispute that has already been resolved through the grievance process. It should therefore be struck as an abuse of process: *McGregor v. Holyrood Manor*, 2014 BCSC 679 at para. 152.

[50] Similarly, the plaintiff's claims against the Union defendants are an attempt to relitigate something already decided by the Board—this time in the s. 12 complaint decision. The differences between the allegations made in the s. 12 complaint and in this proceeding are relatively minor; as I have found, the essential nature of the claims is the same in each forum. Having already been decided by the Board, it would be an abuse of process for the plaintiff to be permitted to relitigate his claims in this court.

V. FURTHER AMENDMENT OF ANOCC

[51] The plaintiff seeks leave to further amend the ANOCC to remedy any issues that cause me to strike his claims.

[52] It is appropriate to deny leave to amend where there is no potential for saving the claim that has been struck: *Olumide v. British Columbia (Human Rights Tribunal)*, 2019 BCCA 386 at para. 10. I have decided that this is the circumstance in this case.

[53] In my view, no matter how it is pleaded or articulated, any claim made by the plaintiff for damages from SD22 in relation to his termination will necessarily arise out of the employment relationship and be governed by the collective agreement. As such, there is no possibility of amending the wage loss claim against SD22 (Part 2, para. 2) in a way that would give this Court jurisdiction or avoid the abuse of process in pursuing the wage loss claim in this Court.

[54] I reach the same conclusion for the claims and facts pleaded against the Union defendants. Even if different words are used, a claim or allegation that the Union defendants acted improperly in their representation of the plaintiff will be outside this Court's jurisdiction and an abuse of process, given the Board's exclusive jurisdiction over the dispute and its s. 12 complaint decision.

[55] Because there is no amendment that could save the struck pleadings, I will not give the plaintiff leave to amend.

VI. CONCLUSION

[56] I order that the following paragraphs of the ANOCC are struck, without leave to amend:

- a) Part 1, paragraphs 12, 13, 14, 17, 18, and 20, in their entirety.

- b) Part 1, the following words of paragraph 10: “without cause and without notice”.
- c) Part 1, the following portions of paragraph 19:
 - i. First sentence, the words “of his own” and “without my knowledge”;
and
 - ii. Second and third sentences, in their entirety.
- d) Part 2, paragraphs 2, 7, and 11, in their entirety.

[57] The effect of this order is that there is no remaining claim against the Union defendants and they are no longer defendants to this proceeding. I award the Union defendants their costs.

[58] SD22 remains a defendant in this proceeding. I award SD22 its costs of this application in the cause.

“Ramsay J.”