CITATION: Ahmad v. Brand, 2025 ONSC 4858
COURT FILE NO.: CV-24-00724141-0000
DATE: 20250825

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: NOUHAM AHMAD, Plaintiff/ Responding Party

AND:

BRAD BRAND, Defendant/ Moving Party

BEFORE: L. Brownstone J.

COUNSEL: *Chantel Goldsmith* for the Plaintiff/Responding Party

Timothy Gindi, for the Defendant/Moving Party

HEARD: July 15, 2025

ENDORSEMENT

L. BROWNSTONE J.

Introduction

[1] The plaintiff, Nouham Ahmad, is an employee at the Special Investigations Unit. He is a member of the Ontario Public Service Employees Union. His employment is governed by a collective agreement between the SIU and OPSEU.

[2] The defendant, Mr. Brand, is the Executive Officer of the SIU. Mr. Ahmad describes Mr. Brand as his "colleague and superior."

[3] Mr. Ahmad claims Mr. Brand subjected him to a "personal campaign of defamation and slander." He seeks damages for defamation and slander as well as for intentional interference with economic relations.

[4] Mr. Brand moves for judgment dismissing the claim under r. 21.01(3)(a) for lack of jurisdiction, because the essential character of the claim's allegations is a workplace dispute that falls within the exclusive jurisdiction of the Grievance Settlement Board.

[5] Mr. Ahmad argues that the claim is a personal, not a workplace, matter. Therefore, it falls outside the Board's jurisdiction and is properly before the court.

Governing law

[6] Under r. 21.01(3)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, a defendant may seek the dismissal of a claim on the grounds that the court lacks jurisdiction over the action's subject matter.

[7] Section 48 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A provides:

> 48 (1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

[8] Subsection 7(3) of the *Crown Employees Collective Bargaining Act, 1993*, S.O. 1993, c. 38, provides:

> (3) Every collective agreement relating to Crown employees shall be deemed to provide for the final and binding settlement by arbitration by the Grievance Settlement Board, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

[9] Further, the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 requires employers to have policies with respect to workplace harassment. These policies are incorporated by reference into collective agreements and within the jurisdiction of an arbitrator under the *Labour Relations Act*: *De Montigny v. Roy et al.*, 2018 ONSC 858, at para. 32, aff'd 2018 ONCA 884.

[10] The controlling case is *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929. There, the Supreme Court of Canada affirmed the exclusive jurisdiction of the arbitration process for determining any differences between the parties arising from the collective agreement or its alleged violation.

[11] The court must determine whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement: *Weber* at para. 52. Disputes that expressly or inferentially arise from the collective agreement are outside of the court's jurisdiction: *Weber* at para. 54.

[12] It is important to look at the actions complained of, as opposed to the legal characterization of the claim: *Weber* at para. 43.

Analysis

[13] Mr. Ahmad argues that his action is not against the SIU, his employer. Rather, the claim relates to personal matters between him and Mr. Brand outside of the workplace. He argues that the claim's subject matter does not arise from the interpretation, application, administration, or

alleged violation of the collective agreement. It is therefore not clear and unequivocal that the court does not have jurisdiction to hear the dispute: *Skof* v. *Bordeleau*, 2020 ONCA 729, 456 D.L.R. (4th) 236, at para. 24.

[14] Mr. Ahmad acknowledges he is, and was at all material times, bound by the terms of the collective agreement.

[15] The collective agreement prohibits discriminatory practices and harassment. Article 3.3 states:

> The Parties are committed to a workplace free from workplace harassment, including bullying, by other employees, supervisors, managers, and any other person working or providing services to the Employer in the workplace, clients or the public, in accordance with the law. Workplace harassment is engaging in a course of vexatious comment or conduct against an employee in the workplace that is known or ought reasonably to be known to be unwelcome.

[16] Under article 22.1.2 of the agreement, an employee is required to meet, where practical, with his immediate supervisor to discuss a complaint. If not resolved, the employee is entitled to file a grievance.

[17] In oral argument, Mr. Ahmad's counsel emphasized the seriousness of the allegations against Mr. Brand. The question for the court, however, is not whether the allegations are serious. It is whether, in their essential character, they are actions that arise from the interpretation, application, administration or violation of the collective agreement.

[18] To understand the essential character of the claim, a careful analysis of the pleading is required. The statement of claim seeks damages for intentional interference with economic relations and defamation and slander. The following is a summary of the allegations in the statement of claim:

a. Mr. Brand was in a conflict of interest with respect to the hiring and promotion of an employee with whom Mr. Brand was in a romantic relationship. After Mr. Ahmad complained to Mr. Brand's superior about this and about Mr. Brand's discriminatory conduct toward First Nations people, Mr. Brand began defaming and slandering Mr. Ahmad. Mr. Brand made false and misleading or inaccurate statements about Mr. Ahmad, which cased Mr. Ahmad reputational damage "in the workplace and beyond."

b. After Mr. Ahmad's meeting with Mr. Brand's superior, Mr. Brand telephoned Mr. Ahmad late in the evening, a call to which Mr. Ahmad did not respond. At work, Mr. Brand accused Mr. Ahmad of trying to get Mr. Brand in trouble. Mr. Brand retaliated against Mr. Ahmad at work by forcing him to change his title and credentials on his email signature line and belittling his operational decisions.

c. Mr. Brand discriminated against other people from marginalized communities and referred to Mr. Ahmad as "the Arab."

d. Mr. Brand behaved improperly and made untrue statements to colleagues during the hiring process for investigative manager, a position for which Mr. Ahmad had applied.

e. Mr. Brand "engaged in a frivolous and vexatious fact-finding meeting" against Mr. Ahmad even though Mr. Brand had been advised not to engage in the meeting. The fact-finding meeting related to Mr. Ahmad's previous employment with the RCMP. Mr. Brand made false and defamatory statements to an investigative manager and others at the SIU about Mr. Ahmad's relationship with the RCMP. Mr. Brand should not have contacted the RCMP.

f. Mr. Brand directed Mr. Ahmad to attend a lengthy meeting without union representation or outside counsel. During the meeting, Mr. Brand referred to non-existent criminal charges against Mr. Ahmad and spoke badly of other colleagues. Mr. Brand sent Mr. Ahmad a letter after this meeting that was "full of mistruths."

g. Because of Mr. Brand's actions, Mr. Ahmad did not get the investigative manager position. Mr. Brand's actions have undermined Mr. Ahmad's relationship with colleagues, stakeholders, and "in his current and future employment", and have caused damages relating to career progression.

[19] Mr. Ahmad also started a reprisal application with the Ontario Labour Relations Board, which is based on allegations of fact that are in large part identical to those alleged in the statement of claim. He also filed four grievances under the collective agreement, which he withdrew in accordance with the election requirement governing reprisal applications at the OLRB. In the reprisal action, Mr. Ahmad takes the position that the same conduct constitutes workplace harassment on which the OLRB should rule.

[20] In support of his position on this motion, Mr. Ahmad delivered an affidavit from Mr. Seymour two weeks before the motion was heard. Mr. Brand objected to the court's reliance on Mr. Seymour's affidavit, which was sworn and delivered five months after the responding materials were due under the court-ordered timetable.

[21] Mr. Seymour is an employee of the Ministry of the Attorney General who has worked for the SIU and led teams of investigators. Part of his affidavit purports to relay a conversation between Mr. Brand and another individual that Mr. Seymour did not overhear. In other parts of the affidavit, Mr. Seymour purports to offer an opinion that Mr. Brand's actions towards Mr. Ahmad are personal, outside of his duties and responsibilities in his role as Executive Officer with the SIU, and that the conduct amounts to personal defamation. He also purports to opine that the matter is outside the collective agreement. These portions of the affidavit are inadmissible. The evidence is not properly the subject of opinion evidence. Even if it were, Mr. Seymour discloses no expert qualifications. I do not admit Mr. Seymour's opinions, or his "double hearsay" statement.

[22] Mr. Seymour also states that Mr. Brand made defamatory remarks about Mr. Ahmad. In my view, even if these paragraphs are admitted, they do not alter my analysis of the essential character of the statement of claim, discussed below.

[23] I find it is clear that the essential character of the claim is alleged unfair treatment by Mr. Brand in the workplace. The treatment and consequences alleged are covered by the collective agreement.

[24] The factual matrix relates to Mr. Brand's conduct in and related to the workplace. Bullying or harassing conduct by other employees is covered by the collective agreement. Improperly denying a promotion at work, thereby stymying career advancement and leading to economic loss, is also workplace conduct subject to a collective agreement: *Carvalho v. Matthews-Altieri*, 2022 ONSC 2352.

[25] The fact that Mr. Brand, not the SIU, is the named defendant, does not change that the essential character of the dispute is one arising from the collective agreement: *Piko v. Hudson's Bay Co*. (1998), 41 O.R. (3d) 729 (C.A.), at para. 13; *De Montigny*.

[26] Nor does the pleading of defamation change the essential character of the dispute. The courts have considered defamation to be part of harassment or discrimination prohibited by collective agreements: *De Montigny*, at para. 24; *McIntyre v. Connolly*, 2008 CanLII 12496, at para. 14; *Giorno v. Pappas* (1999), 42 O.R. (3d) 626 (C.A.); *Carvalho*.

[27] While Mr. Ahmad alleged in oral argument that Mr. Brand made false statements to people outside the workplace, that is not what the claim itself alleges. The claim clearly alleges, repeatedly, that Mr. Brand made untrue statements within the SIU to Mr. Ahmad's colleagues and superiors. There is nothing in the claim that makes this a matter with reach beyond and out of the context of the workplace and the collective agreement. In this respect, the claim is more akin to the facts in *de Montigny* than to those in *Piko*. That is, the claim is clearly focused on Mr. Brand's conduct within the workplace, not conduct involving third parties as was the case in *Piko*. While counsel stated in oral argument that the pleading would need to be amended, I must make my decision on the pleading and record as it stands before me. There was no amended pleading, or proposed amended pleading, before me.

[28] The collective agreement requires the employer to provide a workplace that is free from harassment, including vexatious comment. The Grievance Settlement Board is empowered to remedy the wrongs Mr. Ahmad claims he has sustained. The fact that the remedy may be against the employer and not the fellow employee does not render the remedy any less real: *Giorno*.

Disposition and costs

[29] The motion is granted. The action is dismissed.

[30] Mr. Brand seeks $14,950 on a partial indemnity scale. He argues that Mr. Ahmad's conduct in the late delivery of a motion record and factum increased cots. This was not a simple immunity question. It required Mr. Brand to spend considerable time on the facts and caselaw.

[31] Mr. Ahmad asked for substantial indemnity costs of $30,000 in the event he was successful, because the underlying conduct complained of is egregious and he should not have had to battle his employer in court.

[32] Fixing costs is a discretionary exercise under s. 131 of the *Courts of Justice Act,* R.S.O. 1990 c. C.43. Rule 57 outlines, in a non-comprehensive list, factors that guide the exercise of this discretion. Relevant factors include the results of the proceeding, the principle of indemnity, the amount an unsuccessful party could reasonably expect to pay, the complexity of the proceeding and the importance of the issues. In addition, offers to settle have costs implications.

[33] Ultimately, I must fix an amount of costs that is proportionate, and that is fair and reasonable for the unsuccessful party to pay: *Boucher v. Public Accountants Council for the Province of Ontario* 42 O.R. (3d) 626 (C.A.), at para. 26. A costs award should "reflect what is reasonably predictable and warranted for the type of activity undertaken in the circumstances of the case, rather than the amount of time that a party's lawyer is willing or permitted to expend": *Apotex Inc. v. Eli Lilly Canada Inc.,* 2022 ONCA 587 at para. 65.

[34] The costs sought by Mr. Brand are reasonable and proportionate. The hours spent resulted in a helpful factum with extensive caselaw. The amount would have been in the contemplation of Mr. Ahmad, given his counsel's own costs submissions.

[35] I order Mr. Ahmad to pay Mr. Brand $14,950 in costs, inclusive of disbursements and HST.

L. Brownstone J.

Date: August 25, 2025