In the Court of Appeal of Alberta

Citation: Dunlop v Carpenters' Regional Council of the United Brotherhood of Carpenters and Joiners of America, 2026 ABCA 88

Date: 20260323
Docket: 2403-0170AC
Registry: Edmonton

Between:

Michael Dunlop, Gary Loroff, Robert Provencher and Mahmoud Rahime

Appellants

- and -

Carpenters' Regional Council of the United Brotherhood of Carpenters and Joiners of America, United Brotherhood of Carpenters and Joiners of America, Local Union 2103, Local Union 2010 and Kurt Kashuba

Respondents

The Court:

The Honourable Chief Justice Ritu Khullar*
The Honourable Justice Michelle Crighton
The Honourable Justice Kevin Feth

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice A.K. Akgungor
Dated the 15th day of July, 2024
Filed on the 15th day of August, 2024
(Docket: 2403 13101)

*Chief Justice Khullar did not participate in the final disposition of the judgment.

Memorandum of Judgment

The Court:

I. Introduction

[1] This appeal addresses whether the Alberta Labour Relations Board rather than the Court of King's Bench has jurisdiction over a dispute about internal union discipline applied in a "discriminatory manner", contrary to s 152(1)(b) of the *Labour Relations Code*, RSA 2000, c L-1. The union prosecuted the appellants on disciplinary charges allegedly filed outside the limitation period in the union's constitution. The appeal's outcome depends on the essential character of the dispute between the parties and the interpretation of s 152(1)(b) of the *Code*.

[2] For the reasons below, we dismiss the appeal and agree with the chambers judge that this dispute falls within the Board's exclusive jurisdiction.

II. Facts

[3] The appellants are members of the respondent union and trustees of union-established pension and health and wellness trusts. The union received a complaint that the appellants made unauthorized changes to trust agreements and misappropriated funds. Disciplinary charges were later filed against the appellants.

[4] The union's constitution stated: "The Executive Committee shall dismiss any charge ... that is filed more than six (6) months after the date the violation occurred or reasonably should have been discovered...".

[5] The appellants communicated to the union that the charges were brought "clearly and unequivocally well beyond the prescribed mandatory time limit". They asked that the charges be summarily dismissed failing which they would seek compliance through the courts.

[6] The union responded that the alleged breaches underlying the charges "are of a continuing nature and subject to ongoing litigation" so the "Executive Committee's view was, and remains, that the six-month period for filing charges ... is not applicable in these cases." The union refused to dismiss the charges and scheduled a disciplinary trial.

[7] The appellants applied to the Court of King's Bench in regular chambers for urgent injunctive and declaratory relief to stop the disciplinary trial. They pleaded "serious issues with respect to the interpretation of the Constitution concerning the timeliness of the Charges."

[8] The chambers judge dismissed the application, holding that the dispute about the time limit was governed by the *Code* and fell within the exclusive jurisdiction of the Board. As the Court lacked jurisdiction over the underlying dispute, the injunction and declaratory relief were refused.

[9] The appellants then made a complaint to the Board alleging the union had engaged in an unfair labour practice by refusing to dismiss the charges for being out of time. The appellants sought to enjoin the trial of the charges. In dismissing the request for interim relief, the Board summarized the appellants' allegations: "the Complaint alleges that the Executive Committee's interpretation of ... [the limitation period in] the Constitution is arbitrary, discriminatory, unlawful, unreasonable, and thus contrary to sections 152(1)(a) and 152(1)(b) of the *Code.*" In particular, the appellants argued that the refusal to dismiss the charges was "arbitrary" because the limitation period in "the Constitution is mandatory and requires the Executive Committee to dismiss the charges if they are filed more than six-months after the date the violation reasonably should have been discovered", and "discriminatory" because "the Union is applying its membership rules to the Complainants differently and less favourably than other members of the Union who have charges against them dismissed as being untimely", and "unreasonable" because the purpose of the limitation period is "to prevent the untimely pursuit of stale-dated allegations": ***Dunlop, Loroff, Provencher, Rahime v Carpenters' Regional Council, United Brotherhood of Carpenters and Joiners of America and Kashuba***, 2024 ALRB 75 at para 20 [***Dunlop***].

[10] The appellants appeal the decision of the Court of King's Bench not to grant the injunctive and declaratory relief.

III. Ground of appeal

[11] The broad question on appeal is whether the chambers judge erred in finding the dispute was within the Board's exclusive jurisdiction. That raises two sub-issues: characterization of the appellants' dispute and the interpretation of s 152(1)(b) of the *Code*.

[12] The standard of review for the characterization issue need not be determined because the chambers judge's characterization was correct. The Court's interpretation of the *Code* is a question of law reviewed for correctness.

IV. Analysis

A. Framework for determining exclusive jurisdiction

[13] The relationship between a union and each of its members is contractual, and the union's constitution is the foundation of the contract's terms. Generally, a member can bring an action in the court for breach: ***Berry v Pulley***, 2002 SCC 40 at para 48, [2002] 2 SCR 493. However, the court's general jurisdiction is abrogated where legislation conveys exclusive jurisdiction over a specific matter to an administrative body, such as the Board.

[14] The *Code* creates a framework governing organized labour relations between unions and employers, and some aspects of the relationship between a union and its members. Allowing parties to access the courts, in circumstances regulated by the framework, offends the legislative scheme: see ***St Anne Nackawic Pulp & Paper Co Ltd v CPU***, 1986 CanLII 71 (SCC) at para 20, [1986] 1 SCR 704.

[15] The *Code* expressly assigns to the Board the authority to regulate at least the following aspects of the relationship between the union and its members:

> a) whether a person is a member in good standing of the union - s 12(3)(n);
>
> b) union retaliation against a member for initiating or participating in a labour relations board or arbitral proceeding - s 22;
>
> c) minimum standards of procedural fairness before expelling or suspending a member of the union, or taking disciplinary action against a member - s 26;
>
> d) certain practices by a union against a member, such as discouraging membership or activity in or for a union by coercion, intimidation, threats, promises or undue influence - s 151(f);
>
> e) expulsion or suspension from membership, and taking disciplinary action, or imposing penalties in a discriminatory manner - s 152(1); and
>
> f) the union's duty to fairly represent members with respect to rights under the collective agreement - s 153.

The Board's powers under the *Code* are exclusive: s 12(4) of the *Code*.

[16] The approach to determining whether the Board has exclusive jurisdiction over a dispute involves (i) identification of the "essential character" of the dispute, and (ii) interpretation of relevant *Code* provisions which the Board has exclusive jurisdiction to adjudicate: ***Weber v Ontario Hydro***, 1995 CanLII 108 (SCC) at paras 52-54, [1995] 2 SCR 929 [***Weber***]; ***Regina Police Assn Inc v Regina (City) Board of Police Commissioners***, 2000 SCC 14 at paras 25, 39, [2000] 1 SCR 360 [***Regina Police***]. If the dispute, properly characterized, falls under such a provision, the court lacks jurisdiction over it.

[17] The essential character of a dispute is determined by the facts giving rise to it, not by how the parties have framed it legally. The court should take a "liberal" approach to interpreting *Code* provisions over which the Board has exclusive jurisdiction: ***Regina Police*** at paras 25, 34, 38-39. Narrow interpretations risk defeating the legislative intention to confer exclusive jurisdiction over certain disputes to the Board.

B. Essential character of this dispute

[18] The appellants repeat the argument advanced before the chambers judge that their dispute with the union is about the "correct interpretation of a union's constitution" and therefore outside the scope of the Board's statutory jurisdiction. However, that is a legal characterization. While the resolution of the dispute involves the interpretation of the union's constitution, the essential character is determined by the factual matrix.

[19] The material facts are as follows:

- The appellants are union members and trustees of the trusts.
- The union alleged that the appellants made unauthorized changes to the trusts and misappropriated funds.
- The union commenced disciplinary proceedings, and an internal trial was scheduled.
- The union's constitution contained a limitation period requiring the dismissal of any charge "filed more than six (6) months after the date the violation occurred or reasonably should have been discovered...".
- The appellants communicated to the union that the charges were filed "clearly and unequivocally" more than six months after the violations occurred or reasonably should have been discovered, and that the referral to a disciplinary trial breached the constitution.

- The appellants and the union disagree about the interpretation of the limitation period and therefore whether the disciplinary charges were filed out of time. The appellants contend the union's interpretation is "improper".

[20] Before the chambers judge, counsel for the union described the essential character of the dispute as follows: "Whether a disciplinary action taken in breach of the Union's own constitution is a matter that is considered discriminatory and therefore under section 152 [of the *Code*]". The union's counsel acknowledged that "a union cannot impose internal union discipline through applying its rules or constitution in a discriminatory [manner]." He referred the chambers judge to ***Philip v International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers***, 2008 ABQB 742 [***Philip QB***], affirmed 2009 ABCA 400 [***Philip CA***] which defines "discriminatory" as meaning "to distinguish between individuals or groups on grounds that are illegal, arbitrary or unreasonable".

[21] In brief oral reasons, the chambers judge confirmed "the essential character of this dispute is whether the Union is taking disciplinary action against its members in breach of its own rules" and referred to paragraph 28 of ***Philip QB***: "Actions taken in breach of the Union's own rules, procedures, bylaws or constitution are discriminatory."

[22] The reasons must be contextualized by the submissions. In our view, the chambers judge was describing the essential character of the dispute to be whether the union was applying the standards of discipline in a discriminatory manner against the appellants through a breach of its own constitution. Her finding is supported by the material facts in the record before her. Further, that finding is consistent with the appellants' own description of the dispute in their subsequent complaint to the Board in ***Dunlop***: see para 9, *supra*. (The appellants placed the ***Dunlop*** decision before us and did not assert that the material facts in that complaint were substantively different from the factual matrix before the chambers judge.) The chambers judge's characterization was correct.

C. Interpretation of s 152(1)(b) of the *Code*

[23] If the Board has exclusive jurisdiction to decide the appellants' dispute with the union, that authority comes from s 152(1)(b) of the *Code*, which prohibits unions from applying disciplinary standards in a discriminatory manner:

> **Prohibited practices by trade union, etc.**
>
> 152(1) No trade union or person acting on behalf of a trade union shall …

> (b) take disciplinary action against or impose any form of penalty on a person by applying to the person in a discriminatory manner the standards of discipline of the trade union.

The Board has jurisdiction to decide complaints under this provision pursuant to ss 152(2)-(3), and that jurisdiction is exclusive.

[24] Section 152(1)(b) was interpreted in ***Philip QB*** as follows:

> [27] The Labour Relations Board has approved the interpretation of the term "discriminatory" in section 152(1) as meaning: "to distinguish between individuals or groups on grounds that are illegal, arbitrary or unreasonable." …
>
> [28] Actions taken in breach of the Union's own rules, procedures, bylaws *or constitution* are discriminatory… . [Emphasis added]

This Court affirmed the "broad jurisdictional test" of "illegal, arbitrary or unreasonable" behaviour in ***Philip CA*** at paras 9-10.

[25] Here, the chambers judge referred to the "broad jurisdictional test of [il]legal[,] arbitrary, or unreasonable behaviour set out in the Labour Relations Board jurisprudence" in arriving at her conclusion that the allegations "are clearly matters within the Labour Board's jurisdiction."

[26] The appellants do not ask this Court to revisit the test articulated in ***Philip CA*** and did not file an application to reconsider a prior precedential decision of this Court, as required by r 14.72 of the *Alberta Rules of Court*, Alta Reg 124/2010. However, they suggest this Court did not expressly affirm the principle in ***Philip QB*** that actions "in breach of the Union's own rules, procedures, bylaws or constitution are discriminatory" and therefore fall within s 152(1)(b). The appellants assert the "broad jurisdictional test" excludes the interpretation of a union's constitution. In particular, the appellants argue that the principle in ***Philip QB*** should be distinguished because the facts of that case did not involve a complaint about unconstitutional discipline, so it was unnecessary to hold that disciplinary action in breach of the constitution comes within the scope of s 152(1)(b).

[27] We disagree. In ***Philip QB***, a unionized ironworker started a lawsuit alleging his union breached its contract with him (including the union constitution) by imposing various kinds of discipline, such as not allowing access to work on unionized worksites and imposing fines for working non-union jobs (see paragraph 4). Consequently, it was necessary to determine whether disciplinary action in breach of the constitution could fall under s 152(1)(b). The statement about a breach of the constitution formed part of the legal principle essential to the decision.

[28] On appeal, this Court acknowledged that the "thrust of the [ironworker's] submission" was that his "claims against the Respondents [including the union] for breach of contract, negligence and other claims stem from terms of the constitution and bylaws of the International and Local 720…". This Court held that "the factual context clearly demonstrates, as the chambers judge found, that the essential character uof the dispute … fall[s] expressly within the broad jurisdictional test of 'illegal, arbitrary, or unreasonable' behaviour … and are clearly matters within the Labour Board's jurisdiction": ***Philip CA*** at paras 4, 9. Accordingly, this Court affirmed the legal principle articulated in ***Philip QB*** that a union's standards of discipline are applied in a discriminatory manner when they are taken against or imposed on a person in a way that is illegal, arbitrary or unreasonable; the discriminatory behaviour may include a breach of the union's rules, procedures, bylaws or constitution.

[29] We do not read ***Philip CA*** to suggest that every breach of a union's rules, procedures, bylaws or constitution is discriminatory. Section 152(1)(b) is offended where the standards of discipline are applied in a discriminatory manner. If a standard is expressed in the union's constitution (such as a limitation period), neither the interpretation nor the application of that standard may distinguish between individuals or groups on grounds that are illegal, arbitrary or unreasonable.

[30] In summary, the principle articulated in ***Philip QB*** and ***Philip CA*** cannot be distinguished because it was essential to the outcome of that case. However, even if the principle could be distinguished, the contention that it should be distinguished is unconvincing.

[31] The appellants say s 152(1)(b) should be read to preserve the court's jurisdiction to hear all disputes between unions and their members about the interpretation of the union's constitution because the *Code* grants "limited" jurisdiction to the Board over internal disciplinary disputes. They submit the ***Philip QB*** interpretation of s 152(1)(b) is an outlier because the prohibition on discriminatory discipline in the labour relations codes of other Canadian jurisdictions excludes disciplinary action taken in breach of a union's constitution.

[32] The appellants' position turns the ***Weber/Regina Police*** analysis on its head. Under that framework, the court adopts a liberal interpretation of *Code* provisions which the Board has exclusive jurisdiction to adjudicate to avoid frustrating the legislature's intention that those disputes be decided by the Board, not the court: ***Regina Police*** at para 39. Under the appellants' approach, s 152(1)(b) should be read to ensure the court, not the Board, retains jurisdiction over all internal disputes involving the interpretation or application of the union's constitution.

[33] The liberal approach to the Board's jurisdiction has numerous benefits for the parties. The Board generally offers a resolution process that is faster, cheaper, and less complicated than

litigation in the courts: ***Vaughan v Canada***, 2005 SCC 11 at para 40, [2005] 1 SCR 146. Unnecessary delay, expense and complexity can compromise a worker's ability to participate in a union and earn a living, and interfere with a union's efforts to organize, represent and discipline its members. Access to timely justice is especially important in these circumstances.

[34] The Board has specialized expertise in the operation of unions, internal discipline, the interpretation of union rules, procedures, bylaws and constitutional provisions, and the investigation and resolution of unfair labour practice complaints. That expertise facilitates timely and informed decisions about internal standards of discipline.

[35] A narrow interpretation of the Board's statutory jurisdiction increases the risk of fragmentation, in which the subject matter of a single dispute is divided between the Board and the court, resulting in a multiplicity of proceedings. As noted earlier, the Board has exclusive jurisdiction over several subjects relating to internal standards of discipline including: whether a person is a member in good standing of the union; minimum requirements of procedural fairness for expulsion, suspension and discipline; union retaliation against members; and the discriminatory application of disciplinary standards. As illustrated in this appeal and the caselaw, the provisions in union constitutions commonly overlap with these subjects. Requiring proceedings before both the Board and the court to address the entire dispute, with one forum potentially waiting for the adjudication of an issue in the other, increases the risk of delay and adds complexity. That outcome does not align with the remedial purpose of the *Code*, which contemplates an accessible, timely and efficient process for regulating many aspects of the relationship between a union and its members, including internal discipline.

[36] The liberal interpretation of s 152(1)(b) in the ***Philip*** decisions does not deprive the words "in a discriminatory manner" of meaning. That interpretation still requires the union to treat the disciplined member differently from other members. However, differential treatment is always established when a union disciplines a member in breach of its constitution. The union has a continuing contractual duty to comply with its constitution. By disciplining a member unconstitutionally, the union necessarily treats that member differently from other members who will face constitutionally compliant discipline in the future.

[37] The appellants provided a highly selective sample of labour relations board and court decisions from other provinces and the federal sector to suggest labour boards usually are not given jurisdiction to interpret a union's constitution, and that courts sometimes grant injunctive and other relief to constrain a union's disciplinary or expulsion powers where the union's constitution is violated by the exercise of those powers. We do not find those cases persuasive as they are readily distinguishable. Many do not involve the interpretation of the equivalent of s 152(1)(b). Some simply make the point that the labour relations legislation grants the labour board limited

jurisdiction to adjudicate internal union disputes involving a union's constitution. Most simply affirm the principle that the courts generally have jurisdiction to interpret the contract between a union and its members, but subject to legislative exceptions. None hold that a provision equivalent to s 152(1)(b) excludes disciplinary action which breaches the union's constitution in a discriminatory way.

[38] Finally, as raised in oral argument, the appellants contend s 152(1)(b) has no application until disciplinary sanctions are imposed. They submit the words "take disciplinary action against or impose any form of penalty" on a union member only apply to sanctions, so the court's jurisdiction to grant interim relief before sanctioning is not constrained.

[39] We disagree. Section 152(1)(b) expressly distinguishes between taking disciplinary action and imposing a penalty. The former includes the proceedings leading up to a disciplinary trial, regardless of whether a penalty is later imposed. The appellants' interpretation does not recognize the disjunctive separation of "disciplinary action" from "penalty" in subsection (b) and would render redundant the words "take disciplinary action". That interpretation is contrary to well-recognized principles of statutory construction. Further, protecting union members from both discriminatory proceedings and penalties aligns with the remedial purpose of the *Code*.

D. The essential character of the dispute falls within the scope of s 152(1)(b) of the *Code*

[40] The essential character of the appellants' dispute with the union is that the disciplinary actions against them breached the limitation provision in the constitution in a discriminatory manner. As the chambers judge found, the allegations satisfy the "broad jurisdictional test" in the ***Philip*** decisions of "illegal, arbitrary, or unreasonable" behaviour.

[41] The particulars of the essential character of the dispute include, as largely observed by the Board in ***Dunlop***, the allegations that the Executive Committee's refusal to dismiss the charges is "arbitrary" because the mandatory limitation period is not being enforced, "discriminatory" because the membership rules are being applied to the appellants less favourably than to other members, and "unreasonable" because the contractual language could not rationally and logically support the union's interpretation, which failed to prevent the untimely pursuit of stale-dated allegations.

[42] The material facts of the allegations fall within the scope of s 152(1)(b) of the *Code*. We make no comments about the merits of those allegations.

V. Conclusion

[43] The essential character of the appellants' dispute with the union is governed by s 152(1)(b) of the *Code*. The Board has exclusive jurisdiction to hear the dispute. The chambers judge did not err in declining jurisdiction to consider the appellants' application for urgent injunctive and declaratory relief.

[44] The appeal is dismissed.

Appeal heard on June 4, 2025

Memorandum filed at Edmonton, Alberta
this 23rd day of March, 2026

Authorized to sign for: Crighton J.A.

Feth J.A.

Appearances:

M.S. Porretti (no appearance)
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for the Appellants

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A. Faulkner
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