

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Unite Here Local 40 v. Van-Air Holdings Ltd.*,
2025 BCSC 319

Date: 20250226
Docket: L230490
Registry: Vancouver

Between:

Unite Here Local 40

Applicant

And

Van-Air Holdings Ltd. dba Radisson Blu Vancouver Airport Hotel and Marina

Respondent

Before: The Honourable Justice Lamb

Reasons for Judgment

Counsel for the Applicant:

C. Allevato

Counsel for Respondent:

P.D. McLean

Place and Date of Hearing:

Vancouver, B.C.
January 24, 2025

Place and Date of Judgment:

Vancouver, B.C.
February 26, 2025

[1] Unite Here Local 40 (the “Union”) applies for a contempt order against Van-Air Holdings Ltd. dba Radisson Blu Vancouver Airport Hotel and Marina (“Van-Air”) for an alleged breach of an order issued by the Labour Relations Board on September 19, 2023 and filed with this court on October 11, 2024 pursuant to s. 135 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244 (the “LRB Order”). The parties agreed that the issue of remedy would proceed at a second stage if contempt is found.

[2] This application comes in the midst of a long-running labour dispute between these two parties. Van-Air owns and operates the Radisson Blu Vancouver Airport Hotel and Marina (the “Hotel”) in Richmond, B.C. The Union is certified to represent certain of Van-Air’s employees. Van-Air and the Union are parties to a collective agreement that expired on June 30, 2018. On May 3, 2021, the Union launched a lawful strike, which is ongoing.

[3] During the currency of the strike, the parties have engaged in a number of proceedings before the Labour Relations Board. One of those proceedings was initiated by a complaint filed by the Union on August 8, 2023 pursuant to s. 133 of the *Labour Relations Code* (the “Complaint”). As part of the Complaint, the Union alleged that Van-Air had violated s. 68 of the *Labour Relations Code* by using impermissible replacement workers during the strike to do work normally performed by bargaining unit members. The parties were able to settle their differences, and the Labour Relations Board issued the LRB Order, which included various declarations and consent orders.

[4] The Union says testimony by Van-Air’s representative at a recent Labour Relations Board proceeding proves Van-Air used CRC Contracting workers as impermissible replacement workers contrary to and in contempt of the LRB Order. For the reasons that follow, I am not satisfied that the evidence tendered proves beyond a reasonable doubt that Van-Air used CRC Contracting workers in a manner that breached the LRB Order. Given this conclusion, it is not necessary for me to decide the jurisdictional issue raised by Van-Air in the alternative: whether this court has jurisdiction to determine if Van-Air used impermissible replacement workers or

whether that issue falls within the exclusive jurisdiction of the Labour Relations Board.

Legal framework

[5] There is no dispute between the parties regarding the legal framework that applies to a contempt application.

[6] At paras. 32 to 35 of *Carey v. Laiken*, 2015 SCC 17, the Supreme Court of Canada made clear that civil contempt has three elements that must be proven beyond a reasonable doubt:

- a) the order alleged to have been breached must state clearly and unequivocally what should and should not be done;
- b) the party alleged to have breached the order must have actual knowledge of the order; and
- c) the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

[7] The party alleged to have breached the order need not have contumacious intent, i.e., the intent to be in contempt of the order.

[8] The court’s contempt power is discretionary and should be used “cautiously and with great restraint”: *Carey* at para. 36.

[9] At para. 33 of *Bassett v. Magee*, 2015 BCCA 422, our Court of Appeal adopted the principles from *Peel Financial Holdings Ltd. v. Western Delta Lands Partnership*, 2003 BCCA 551 that apply to a contempt proceeding:

- a) the proceeding is quasi-criminal in nature, and trial rules of admissibility of evidence apply;
- b) the applicants bear the onus of proving the elements of contempt beyond a reasonable doubt; and

- c) if the order said to be breached is ambiguous, the alleged contemnor is entitled to the most favourable construction.

Alleged contempt

[10] I am not satisfied that the Union has proven beyond a reasonable doubt that Van-Air breached the LRB Order. The evidence does not prove beyond a reasonable doubt that Van-Air used CRC Contracting workers in a manner that breaches the LRB Order. Further, the evidence tendered is not specific enough to prove beyond a reasonable doubt that Van-Air used CRC Contracting workers in a manner that contravened the LRB Order *after* September 19, 2023.

[11] As part of the LRB Order, the Labour Relations Board declared that Van-Air breached the *Labour Relations Code* by retaining contractors to do specified work and ordered Van-Air to cease and desist using impermissible replacement workers, which are described in s. 68 of the *Labour Relations Code*:

- 68** (1) During a lockout or strike authorized by this Code an employer must not use the services of a person, whether paid or not,
- (a) who is hired or engaged after the earlier of the date on which the notice to commence collective bargaining is given and the date on which bargaining begins,
 - (b) who ordinarily works at another of the employer's places of operations,
 - (c) who is transferred to a place of operations in respect of which the strike or lockout is taking place, if the person was transferred after the earlier of the date on which the notice to commence bargaining is given and the date on which bargaining begins, or
 - (d) who is employed, engaged or supplied to the employer by another person, to perform
 - (e) the work of an employee in the bargaining unit that is on strike or locked out, or
 - (f) the work ordinarily done by a person who is performing the work of an employee in the bargaining unit that is on strike or locked out.

[12] On this contempt application, the Union alleges Van-Air breached the following provisions of the LRB Order:

- a) Para. 4: I order [Van-Air] to cease and desist using any impermissible replacement worker to clean rooms or floor hallways following

renovations, including renovation dirt and mess that is remaining after contractors have completed their tasks. For clarity, this does not include the work of tradespeople who cleaned dirt and mess related to their construction tasks. For greater clarity, all remaining cleaning work may only be performed by permissible workers;

- b) Para. 6: I order [Van-Air] to cease and desist using any impermissible replacement worker to assemble bed frames or lamps;
- c) Para. 8: I order [Van-Air] to cease and desist using any impermissible replacement worker to move furniture into rooms or to install the furniture into rooms as per specifications, with the exception of headboards and heavy desks as outlined below;
- d) Para 10: I order [Van-Air] to cease and desist using any impermissible replacement worker to set up guest rooms, including to install finishings, wall art, amenities, hang and program televisions, or hang drapery.

[13] The evidence in support of the Union’s contempt application is found in the affidavit of Karen Segal, a lawyer who represents the Union. Ms. Segal deposes to various background facts regarding renovations at the Hotel that are not obviously within her personal knowledge; Van-Air did not object to the admissibility of this evidence.

[14] The key evidence in support of the Union’s contempt application is found at paras. 13 to 17 of Ms. Segal’s affidavit. The Union filed a fourth application on July 15, 2024 (the “Fourth Application”), which was heard by the Labour Relations Board in November 2024 and December 2024. I am advised and accept that there is no recording or transcript of the proceeding before the Labour Relations Board.

Ms. Segal deposed as follows:

13. During the course of the hearing of the Fourth Application, on November 28, 2024, the Employer called Ashwin Kumar as its witness. Mr. Kumar testified that he is the director of operations of Pacific Hospitality Inc, which is

part owner of the hotel. His portfolio includes overseeing the renovations at the hotel and converting the hotel to the Radisson Blu brand.

14. Mr. Kumar testified that he works very closely with Craig Columbus, the principal of CRC Contracting, and communicates with him a few times a day. Mr. Kumar testified that he lived in the hotel from November 2021 to August of 2024.

15. During cross examination I asked Mr. Kumar what does the [renovated] room look like when CRC Contracting is done. He replied that, “It is more like when the construction or renovation is done, drywall is done, furniture is there, carpet is there, all the stuff is there.”

16. During cross examination I asked Mr. Kumar who moves the furniture in [to the room]. He replied that “It was mostly CRC and hotel staff.”

17. During cross examination I asked Mr. Kumar who cleans the room after the renovation is done. He replied, “CRC”.

[15] The reference to “the Employer” in Ms. Segal’s affidavit is to Van-Air. I understand the words in square brackets to be words that were implied rather than expressed.

[16] I accept Mr. Kumar’s evidence at the Labour Relations Board is admissible as a statement against interest. That said, I am not convinced this evidence proves beyond a reasonable doubt that Van-Air breached the LRB Order.

[17] First, the evidence does not prove beyond a reasonable doubt that Van-Air used CRC Contracting workers in a way that breached the LRB Order. Paragraph 4 of the LRB Order permits “tradespeople” to clean “dirt and mess related to their construction tasks”: the evidence at para. 17 of Ms. Segal’s affidavit does not prove beyond a reasonable doubt that CRC Contracting workers did more than clean “dirt and mess related to their construction tasks”. Paragraph 8 of the LRB Order does not preclude impermissible replacement workers from moving headboards and heavy desks into rooms: the evidence at para. 16 of Ms. Segal’s affidavit does not

prove beyond a reasonable doubt that CRC Contracting workers moved more furniture into the room than is permitted by para. 8 of the LRB Order. In fact, Mr. Kumar testified that “CRC *and hotel staff*” moved furniture into the room. It is common ground that hotel staff hired before the strike would not necessarily be considered “impermissible workers” when doing bargaining unit work.

[18] Most significantly, Mr. Kumar was not asked *when* any of the cleaning or moving of furniture was done by CRC Contracting. Specifically, it is not clear whether CRC Contracting cleaned or moved furniture after the LRB Order was issued on September 19, 2023. The Union says the question was posed and answered in the present tense and asks me to conclude that Mr. Kumar admitted that CRC Contracting’s cleaning and moving of furniture continues to happen. However, without knowing the entire context of the cross examination, I have a reasonable doubt regarding what time period Mr. Kumar was discussing when he gave the quoted evidence. I note that Mr. Kumar resided in the Hotel as early as November 2021, almost two years before the LRB Order was issued. Without precise evidence regarding time frame, I am not satisfied that the Union has proven beyond a reasonable doubt that any CRC Contracting work happened after September 19, 2023.

Conclusion

[19] The Union has failed to prove beyond a reasonable doubt that Van-Air breached the LRB Order. Given this finding, it is not necessary to address the interesting jurisdictional issue.

[20] The Union’s application is dismissed with costs to Van-Air.

“Lamb J.”