

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20061208  
Docket: S067204  
Registry: Vancouver

Between:

**Telecommunications Workers Union**

Plaintiff

And:

**Bruce Bell**

Defendant

Before: The Honourable Mr. Justice Groves

## **Oral Reasons for Judgment**

In Chambers  
December 8, 2006

Counsel for Plaintiff

J.D. Mostowich

Counsel for Defendant

J. Bowering

Place of Trial/Hearing:

Vancouver, B.C.

[1] **THE COURT:** The dealings between the Telecommunications Workers Union, who I will refer to as the "TWU," and Bruce Bell, who I will refer to as "Bell," have been before the court on a number of occasions over the past two years.

[2] The TWU is a union which represents approximately 11,600 workers in British Columbia, Alberta, Ontario and Quebec. It is managed by its executive council, which I am advised consists of about 18 members. Like most unions, the TWU is governed by its constitution and this constitution provides that the convention of the union is the highest governing authority.

[3] The union holds its conventions annually according to its constitution in the first week of March and in-between conventions, the executive council governs the operations of the union.

[4] Bell was elected president of the TWU in the first week of March 2005. At this point, it appears that the TWU had a long standing dispute with Telus, an employer who employs a number of its members. Bell came on as president of the TWU during a difficult time of labour management strife and, in fact, may have been elected during a strike.

[5] Under his leadership the strike and the dispute with Telus was eventually resolved. The strike was most acrimonious for the Telus and the TWU and the settlement was equally so internally for the union.

[6] Prior to the convention of the TWU in March of 2006 and pursuant to its constitution, a special convention was held. At the special conventions two motions were passed by the delegates. The first was motion of non-confidence in Bell as president. The second motion was a motion which called for all positions of the executive council, including Bell's, to be put up for election at the 2006 convention.

[7] Of note, the TWU constitution appears to operate with half of its executive being elected each year and all members serving a two-year term.

[8] The latter of these motions was challenged, and in reasons for judgment, Justice Nathan Smith of this court, dated June 30, 2006, held that the second motion passed at the special convention was *ultra vires* on the constitution of the union. Of note, the first motion, the non-confidence motion in Bell, has not been litigated.

[9] Pursuant to the TWU constitution, on June 5, 2006, 13 convention delegates delivered a memorandum to the TWU charging Bell, the president, with dereliction of duty. Pursuant to the constitution of the union, where a charge of dereliction of duty is made against an officer, a trial board is drawn from the executive council to hear the charges.

[10] In another piece of litigation, Bell initiated action in the Supreme Court of British Columbia attempting to prevent the trial board from convening on what was alleged in that litigation to be bias on behalf of the members of the trial board. Justice Silverman of this court dismissed the application on July 19, 2006.

[11] The charges against Bell were heard by the trial board in a trial which began on July 20, 2006. After making preliminary objections which were considered and ruled upon by the trial board, Bell and his legal counsel did not participate in the hearing of the charges before the trial board. The trial continued. The trial board heard evidence and delivered reasons for judgment on August 6, 2006.

[12] The determination of the trial board has not been directly challenged before me in these proceedings. Bell was found guilty by the trial board of dereliction of duty. The trial board imposed a personality removing Bell from office and declared that he was no longer a member in good standing of the TWU.

[13] Under the TWU constitution, Bell has a right of an appeal and this appeal is to be to an ombudsperson appointed by the Canadian labour congress, who I will refer to as the "CLC," pursuant to the CLC's constitution.

[14] In that regard, John Shields was, after the request made by the Bell, appointed by the CLC president Ken Georgetti to be the ombudsperson for this appeal.

[15] In this proceeding, I have heard the representation of the CLC as an intervenor and have before me the affidavit of Ken Georgetti, president of the CLC. It is clear to me that the CLC does not regularly get itself involved through its ombudsperson in this type of activity. In fact, the CLC constitution and the CLC guidelines for an ombudsperson do not appear to contemplate the ombudsperson playing this type of role, an appellant role.

[16] Counsel for the CLC, upon questioning from the court, indicated that she was not aware of any other union or any other circumstance in which the CLC has been asked to provide this type of appellant review of a union decision.

[17] Needless to say, however, the CLC undertook the role when requested to do so by a member union's constitution, the TWU being a member union of the CLC.

[18] I will get into greater details of the appeal of this trial decision later these reasons, but suffice it to say that an appeal was held and the ombudsperson John Shields ruled. The result of that was that the ombudsperson set aside the decision of the trial board and found Bell was not guilty of dereliction of duty.

[19] The ombudsperson further purported to reinstate Bell as president by essentially and completely setting aside the decision of the trial board. The TWU has not recognized this decision and almost immediately brought on an application

by way of writ of summons and statement of claim to obtain an injunction prohibiting Bell from acting as president.

[20] After the decision of Shields, Bell purported to continue to act as president. Bell appears to have the support of three members of the 18-person executive council, and the remaining members of the executive council are opposed to Bell. Needless to say, this has caused considerable disruption for the TWU. It has two factions which purport to speak to it. Its executive and other meetings appear to have been rancorous. It has two factions which are communicating to members in various ways claiming to be in charge of the union and both factions have been dealing with third parties and communicating to them on behalf of the TWU.

[21] It seems clear from the materials before me that the TWU's unionized office staff have found this uncertainty, to put it bluntly, the question of who is in charge, unsettling and disruptive. There is no evidence before me about what third parties may be thinking, but it seems logical that they would be equally confused. The reputation of the TWU and thus its members may well be suffering.

[22] Clearly this issue will be resolved in its entirety at the next convention of the TWU when the position of president as well as a number of other executive positions are up for election. That is a little more than two months away.

[23] The TWU commenced this action on November 7, 2006. In their claim they seek a declaration that the October 23, 2006 decision of John Shields and ombudsperson for the CLC is of no force and effect. They seek an order that the decision of the trial board of the TWU made August 6, 2006, be confirmed. They

seek an interlocutory injunction prohibiting Bell from holding himself out of as president of the TWU to third parties until the trial of the action.

[24] Bell, by way of statement of defense and counterclaim, seeks a declaration that the ombudsperson's decision is of full force and effect. He seeks an order that he be entitled to fulfill his term of office and that he continue uninterrupted as a member in good standing of the TWU. He also seeks an interim and permanent injunction prohibiting the TWU and its members and officers and other persons from dealing or interfering with him in the performance of his duties of the office of president.

[25] Strong exception is taken to the latter request by Bell by the representatives of the TWU. They point to a history of Bell in their view acting on his own and acting without being mindful of the bylaws, the constitution and/or the direction of the TWU executive. The TWU's trial board findings are that these actions of Bell, in not abiding by the bylaws and the rules, in acting as was described in court as a "lone wolf", in acting contrary to the directions of executive council, are the basis for the charges and his conviction for dereliction of duty.

[26] Specifically, it was alleged before the trial board that Bell acted inconsistent with the directions of the TWU executive or its policy in negotiating with Darren Entwistle, the president of Telus in the absence of another union representative. I find this clearly contrary to the written policies of the union. Bell says he only met with Entwistle to discuss resuming negotiation.

[27] It is also alleged that Bell was derelict in his duties in inviting a non-union member, specifically the president of the Canadian Auto Workers, Buzz Hargrove, along on a negotiating session with Telus. This I find is also contrary to the written policies of the TWU. Bell says this action, inviting Buzz Hargrove, has done with the consent of other members of the bargaining unit.

[28] Additionally it is alleged that Bell is or was negotiating a merger with or a take over by another union, of the TWU, contrary to the directions of the union convention and the executive council specifically. Bell denies this, although he admits he is a proponent of such a merger.

[29] It goes without saying that in this application before me, the issues of the correctness of the trial board decision is not before me in any way. No one seeks in this litigation to set it aside per se. The correctness of the ombudsperson's decision was argued before me, but it is equally true that this application is not the forum to make a determination about the appropriateness of the ombudsperson decision in a final way.

[30] What I have before me are competing injunction applications. I have, however, reluctantly concluded that in order to deal with the injunction application, I must at least in part provide a preliminary analysis of the decision of the ombudsperson dated October 23, 2006.

[31] The trial process in this union, the actions of the trial board and the ombudsperson are part of a domestic tribunal, not an administrative tribunal. The

courts have only a very limited supervisory jurisdiction over domestic tribunal, over the internal decision making and appeal process made under the TWU constitution.

[32] The leading case that sets guidance for the courts in determining matters regarding domestic tribunals is the decision of ***Vancouver Hockey Club Ltd. v. 8 Hockey Ventures Inc.*** [1987] B.C.J. No. 2074. There are a number of cases which have been provided which follow the ***Vancouver Hockey Club*** decision.

[33] In the ***Vancouver Hockey Club*** case, this involved an internal decision of the president of the National Hockey League to expel a coach from the NHL and impose significant fines on a hockey club. In that context in mind, the court found the following:

The court is not a court of appeal. Rather its power is narrow and it may only interfere if orders are made without jurisdiction or against the rules or it has been made in bad faith or contrary to the rules of natural justice.

[34] Numerous other cases were cited before me which add or provide nuance to the general principle set out in the ***Vancouver Hockey Club*** case.

[35] For purposes today again, I am technically not providing a full review of this ombudsperson's decision. Nor am I deciding the appropriateness of the decision. I am really only considering the decision of the ombudsperson in light of the competing injunction applications.

[36] Let me clear on this point, as clear as I can. To balance and assess the competing injunction applications, I must make a preliminary decision on the



complaints about the ombudsperson's decision which this litigation seeks in the long term to set aside.

[37] With that in mind, I have concluded that in a number of significant ways the ombudsperson appointed by the CLC has acted contrary to the rules of natural justice.

[38] First and significantly, the ombudsperson failed to hear or seek submissions from all affected parties. At the hearing before the trial board, to use the language of the union, there were "accusers," those who made the complaints of dereliction of duty; the "accused," Mr. Bell; and there was, of course, the "trial board."

[39] At the appeal level before the ombudsperson, the accusers were not invited, nor was there position on appeal sought. This is a fundamental flaw. To put it in a labour relations context which all parties are familiar, if the Labour Relations Board made a decision involving two unions and judicial review was sought, both unions and the LRB, the Labour Relations Board, could be required parties at any judicial review.

[40] Clearly natural justice requires that when a decision of a domestic tribunal is appealed or reviewed, both parties to the domestic tribunal must be notified and invited to participate in the appeal, as should the body whose decision is being appealed. That was not done here.

[41] Secondly this domestic tribunal appeal appears to significantly lack the necessary level of independence to satisfy the requirements of natural justice. Specifically, I note the following from the accounts of the ombudsperson John

Shields to the TWU for payment for his services. On August 20, 2006, on his account it is noted the following:

Phone call from President Georgetti requesting to review draft position on ombudsman's role in this dispute.

Complete draft position on reasons for judgment. E-mail draft to Georgetti.

Spoke to President Georgetti and was asked to suspend proceedings pending his meeting with TWU executive council.

[42] An ombudsperson is the person appointed by the TWU constitution to hear an appeal. An ombudsperson acting as an appellant authority must be independent of all parties and all potentially interested parties. The decision of the ombudsperson must be based on his or her analysis of the parties' respective position as to facts and the law or rules governing. He must not be influenced by the person who appoints him, in this case the president of the CLC. He must not seek the person who appoints him influence in his decisions.

[43] Here one cannot help but conclude that Mr. Georgetti had some influence in at least a preliminary ruling. That was alleged by counsel for the TWU and was not challenged by counsel for Bell or the CLC. This process requires an ombudsman, not the president of the CLC, to play the role of appellant body.

[44] Thirdly, having reviewed the reasons of Ombudsperson Shields, I find that the combination of his lack of understanding of the trial and appeal process, his described approach to adjudication, and his failure to provide reasons collectively lead to an additional failure to conduct a process in accordance with the principles of natural justice.

[45] Here the ombudsman views his role as an extension of the trial rather than appeal. He appears at times to confuse his role.

[46] Here the ombudsman fails to set out the basis on which he is going to decide the case. To use his language:

My description of how I intend to conduct this appeal was in a non-judicial, non-legalistic approach that will look for the facts and make a determination in the context of an internal trade union framework using natural justice and fairness as my guide.

[47] This suggests that the ombudsperson has set out to make a determination on this appeal based not on analysis of the facts and any law but potentially on some other context which he and only he was aware. There is in doing such no accountable standards, no ground rules, no procedure which are apparent in advance to allow the parties to properly address the merits and against the standard of which the adjudication will proceed.

[48] Here the ombudsman in the reasons themselves does not provide reasons for his decision. Rather he purports to supplant the decision of the trial board with the ombudsperson's own view of the matter again based not on judicial or legalistic approach but rather on some undetermined and internally known approach.

[49] These three problems together give rise to a third breach of natural justice in the hearing that was conducted in a manner inconsistent with general appellant requirements. Generally speaking on appeal everyone must know what the ground rules are and every decision must be based in some way on determining the facts, applying the rules to the facts and making a reasoned decision. The way in which this ombudsperson handled his responsibility makes that impossible.

[50] I have concluded that in assessing the competing injunction applications, I cannot place any weight on the decision of the ombudsperson dated October 23, 2006. It is simply too flawed to be considered worthy of any weight.

[51] Unfortunately, both the TWU and Bell need to have the uncertainty that has existed since the reasons of the ombudsman have been released resolved.

[52] The test for granting an injunction is well established. First, is there a serious issue to be tried? Here as noted, the ombudsperson's decision on my review of it is replete with error. The answer to the first question is yes, there is a serious issue to be tried.

[53] The second aspect of the test is does the balance of convenience favour the granting of the injunction or its denial? The final aspect of the test is will either party suffer irreparable harm arising from the injunction or its denial?

[54] On the facts, Bell does not have the support of the executive of the TWU. They are acting in polar opposite directions. I have concluded based on the evidence before me that Bell has a propensity to act as what was described by counsel for the TWU as a "lone wolf". Given the opportunity, past history suggests that Bell will do what he wants regardless of the directions provided to him by the executive of the TWU.

[55] If I was to grant the injunction he seeks, I have concluded that he would act opposite to the vast majority of elected TWU executive council. Conversely, if the injunction sought by the TWU was granted as pled, Bell would never be given an opportunity to plead his case to his fellow union members and seek reelection. If he

is deprived of his union membership, he cannot run, he cannot campaign and he cannot be involved in the process. It seems clear to me, though not stated, that Bell desires to seek reelection as president of this union.

[56] I also note that time is a significant factor. Today is December 8, 2006.

There is realistically one week's full court time available until the end of the year, though there is a partial sitting week from December 18th to December 22nd. Court then recommences on January 8, 2007 and will sit for approximately eight weeks prior to the next union convention.

[57] From my discussions with the trial coordinator's office, there is simply no time to have this matter resolved effectively prior to the next convention of the TWU.

[58] The union, the TWU, which I have indicated represents some 11,600 workers, cannot and should not be forced into legal limbo until its next convention. That would be unfair to them and it would be equally unfair to Bell.

[59] I have concluded that an injunction of some nature must be granted. The union would suffer irreparable harm if it is denied. Bell would suffer irreparable harm if deprived of his union membership.

[60] I have concluded that it is necessary for the following to be ordered: I am basing this order in part on the inherent jurisdiction of the court and the ability of the court under the rules to control its own process. Both parties have sought the remedy of the court in resolving this dispute, so they have sought the court's assistance in the resolution process.

[61] I am also aware in making this determination that there remains, after my analysis of the decision of the ombudsperson, the decision of the trial board of this union which has found Bell to be in dereliction of his duty.

[62] On a without prejudice interim basis, I am going to grant an injunction which prohibits Bruce Bell from acting as or holding himself out as president of the TWU to its membership or to third parties.

[63] I am going to direct that Bruce Bell is entitled, pending determination of this action, to continue uninterrupted as a member in good standing of the TWU.

[64] I further direct that the TWU is to continue to pay Bruce Bell from his banked time and to continue to provide him with his cell phone, laptop and automobile, which I would consider his employment benefits.

[65] This injunction will continue until the litigation is resolved or to the end of the next convention, which by my calculation is March 11, 2007.

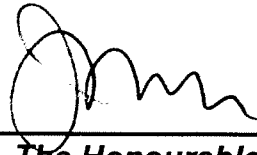
[66] Bell or someone else will be elected at that time as president. If it is Bell, he will no doubt be entitled to the continuation of those benefits and he will then be entitled to act in every capacity as president of the TWU.

[67] If he is not reelected, then he would have no further entitlement to any benefits, nor would he have further entitlement to claim himself to be president.

[68] I specifically leave open whether or not if Bell is ultimately successful the union is responsible to him for his lost banked time as a result of the trial board's actions.

[69] This is very much a band aid solution. The decision is put in place so as to allow the TWU to continue to operate in a reasonable fashion pending its next convention and/or the ultimate determination of its dispute between them and Bell, and it is put in place to allow Bell while the matter is unresolved to continue to act as a member of the TWU and to seek office if he so chooses.

[70] Costs of this application will be costs in the cause.



---

***The Honourable Mr. Justice Groves***