ISSN 1712–4506 (Online)

Ontario Labour Relations Board HIGHLIGHTS

Editors: Aaron Hart, Solicitor
Lindsay Lawrence, Solicitor

December 2020

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in November of this year. These decisions will appear in the November/December issue of the OLRB Reports. The full text of recent OLRB decisions is available on-line through the Canadian Legal Information Institute www.canlii.org.

***Employment Standards Act* – Application for Review – Director's Order to Pay –** Issue to be decided was whether the applicant was a director of the company at the time the wages claimed by the employee responding parties were owing – Applicant claimed he was not a director, had resigned his directorship in 2016, and was not voluntarily reappointed as a director of the company after his resignation - Corporation Point in Time Report indicated applicant was as a director of the company at the relevant time – He was therefore presumed to be a director, but that presumption was rebuttable – Board cautious in assessing self-serving evidence such as the claim by the applicant in this case that he was unaware of his re-appointment as a director, following his resignation – Board considered caselaw on failure to call a key witness to corroborate claims of resignation – Board satisfied that applicant was not a director at the time the employees' claims arose, and found nothing in applicant's unchallenged testimony that called out for additional corroboration – Director Order to Pay rescinded – Application for review allowed.

RINO VETRONE A DIRECTOR OF 2406669 ONTARIO LIMITED; RE: DEVLIN BRAND ET AL.; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB File No. 3429-19-ES; Dated November 25, 2020; Panel: Patrick Kelly (13 pages)

***Occupational Health and Safety Act* – Reprisal – Migrant Worker –** Applicant, a migrant worker from Mexico, alleged that he was dismissed by employer after raising concerns about working and living conditions as related to the COVID-19 virus – Board concluded that applicant had spoken out at a meeting about the working conditions, the living conditions, and generally about his concerns about COVID-19 - There are no magic words to engage the protections of the Act, and a worker is not required to cite the Act or specific sections – Applicant was seeking enforcement of the Act by raising his concerns – Onus is on employer to prove that it did not act in a manner that violated the Act – Employer failed to satisfy this onus – Board concluded that the applicant was terminated for exercising his rights under the Act – Application granted and damages awarded for lost wages, loss of future earnings, reasonable expectation of continued employment and pain and suffering.

SCOTLYNN SWEETPAC GROWERS INC.; RE: LUIS GABRIEL FLORES FLORES; OLRB File No. 0987-20-UR; Dated November 9, 2020; Panel: Matthew R. Wilson (22 pages)

***Occupational Health and Safety Act* – Section 61 Appeal – Privacy – Video Hearing –** Appeals filed under section 61 of the *Occupational Health and Safety Act* alleging failure of inspector to issue orders relating to alleged threats and risk of violence and assault – Objection raised to proceeding by video hearing given obligations on hospital to protect personal health information – Hearings proceeding by video during pandemic – Board noted parties were astute in their appreciation of the dictates of the *Personal Health Information Protection Act* and would ensure that the evidence introduced in the proceeding would not involve any participant in a potential violation – *PHIPA* does not distinguish between in-person and other hearings – No evidence before Board to suggest that there were sufficient security risks, particularly with vigilance of parties, to justify a departure from video hearing – Parties expected to prepare and submit their materials with due regard for the *PHIPA* and various security conventions canvassed at preliminary hearing – Matter continues.

ST. MARY'S GENERAL HOSPITAL; RE: ONTARIO NURSES' ASSOCIATION; RE: A DIRECTOR UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT; OLRB File Nos. 0272-19-HS and 3471-19-HS; Dated: November 2, 2020; Panel: Derek L. Rogers (11 pages)

Related Employer – Intervenors – Standing – Application filed under subsection 1(4) and/or section 69 of the *Labour Relations Act, 1995* – Antonio and Maria Marcantonio (collectively, "the Marcantonios") sought to intervene in the proceeding in their personal capacities – Rule 40.8 of the Board's Rules of Procedure requires demonstration of real, direct, and discernable interest in the proceeding to secure standing – Dispute as to whether the Marcantonios had fundamental control over one of the corporate responding parties – Ongoing civil litigation involving the question of control – Board held the fact that a decision in this proceeding may be used or referred to as a precedent in another proceeding is not sufficient to entitle a party to intervenor status – Marcantonios had not established a real, direct, and discernable interest in this proceeding in their personal capacities – Marcantonios could be called as witnesses by one of the parties to the proceeding, or could participate in the proceeding by filing a response with the Board on behalf of the corporate responding party – Motion to add intervenors dismissed – Matter continues.

NLG 2011 INC.; RE: CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 93; RE: NAUTICAL LANDS GENERAL CONTRACTORS INC.; RE: NLG GODERICH INC.; RE: 2327409 ONTARIO INC.; RE: NLG LP ONE; RE: YORK-HOP CORP.; RE: CHARLAMARA HOLDINGS INC.; RE: BOND DESIGN BUILD INC.; OLRB File No. 3184-19-R; Dated November 19, 2020; Panel: Lee Shouldice (7 pages)

Request for Reconsideration – Application for Certification – Board issued a decision with respect to Rasier's notice under subsection 8.1 of the Act – Rasier sought reconsideration of that decision – Rasier argued, *inter alia,* that Board erred in characterizing the individuals who were on its list as "agreed in", unfairly relied on prior Board jurisprudence to that end, and was internally inconsistent in requiring that drivers on the list have a valid license on the application date, given evidence that licences might be temporarily suspended or expired – Application for reconsideration is not an appeal or an opportunity to attempt to re-argue the case – Board concluded Rasier was attempting to re-argue its position on the list of employees and the novelty of the workplace – Board's decision relied on longstanding caselaw that has consistently precluded parties from revisiting the employee lists that are filed with the Board – Policy issues did not justify reconsideration – Argument of internal inconsistency failed to recognize Board's determination of an appropriate and principled middle ground between two extreme positions – Request for reconsideration is dismissed – Matter continues.

UBER CANADA INC., RASIER OPERATIONS B.V. AND UBER B.V. D.B.A. UBER BLACK AND UBER BLACK SUV; RE: UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW

CANADA); OLRB File No. 2845-19-R; Dated November 24, 2020; Panel: Matthew R. Wilson (11 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
SNC Lavalin Nuclear Inc. Divisional Court No. 473/20	3488-19-ES	Pending
KD Poultry Divisional Court No. 20-DC-2611 **(Ottawa)**	0618-19-ES 1683-19-ES 1684-19-ES 2165-19-ES	Pending
Paul Gemme Divisional Court No. 332/20	3337-19-U	Pending
Fortis Construction Group Inc. Divisional Court No. 395/20	1638-17-R	Pending
Aluma Systems Inc. Divisional Court No. 456/20	2739-18-JD	Pending
Anthony Hicks Federal		
Capital Sports & Entertainment Inc. Divisional Court No. 20-DC-2593	1226-19-ES	Pending
Rochelle Sherwood Divisional Court No. 074/20	1551-19-U 1557-19-UR	Pending
Joe Mancuso Divisional Court No. 28291/19 **(Sudbury)**	2499-16-U – 2505-16-U	Pending
Abdul Aziz Samad Divisional Court No. 019/20	3009-18-ES	Pending
Daniels Group Inc. Divisional Court No. 018/20	0279-16-R	Pending
Audrey Thomas Divisional Court No. 436/19	2508-18-U	Pending
The Captain's Boil Divisional Court No. 431/19	2837-18-ES	Pending
Kuehne + Nagel Ltd. Divisional Court No. 393/19	0433-18-R	Pending
Todd Elliott Speck Divisional Court No. 371/19	1476-18-U	November 18, 2020
New Horizon Court of Appeal No. C68664	0193-18-U	Pending
Doug Hawkes Divisional Court No. 249/19	3058-16-ES	Pending

(December 2020)

EFS Toronto Inc. Divisional Court No. 205/19	2409-18-ES	Pending
RRCR Contracting Divisional Court No. 105/19	2530-18-U	Adjourned due to pandemic
AB8 Group Limited Divisional Court No. 052/19	1620-16-R	Adjourned due to pandemic
Tomasz Turkiewicz Divisional Court No. 262/18, 601/18 & 789/18	2375-17-G 2375-17-G 2374-17-R	November 19, 2019
Deloitte Restructuring Inc. Divisional Court No. 238/18	2986-16-R	November 18, 2019
China Visit Tour Inc. Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
Front Construction Industries Divisional Court No. 528/17	1745-16-G	Adjourned due to pandemic
Enercare Home Divisional Court No. 521/17	3150-11-R 3643-11-R 4053-11-R	Pending
Ganeh Energy Services Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	October 21, 2019
Myriam Michail Divisional Court No. 624/17 **(London)**	3434–15–U	Pending
Peter David Sinisa Sesek Divisional Court No. 93/16 (**Brampton)**	0297–15–ES	Pending
Byeongheon Lee Court of Appeal No. M48402	0095-15-UR	Pending
Byeongheon Lee Court of Appeal No. M48403	0015-15-U	Pending
R. J. Potomski Divisional Court No. 12/16 **(London)**	1615–15–UR 2437–15–UR 2466–15–UR	Pending
Qingrong Qiu Court of Appeal No. M48451	2714–13–ES	Pending
Kognitive Marketing Inc. Divisional Court No. 51/15 **(London)**	0621–14–ES	Pending
Valoggia Linguistique Divisional Court No. 15–2096 **(Ottawa)**	3205–13–ES	Pending