



Civil Resolution Tribunal

Date Issued: November 10, 2022

File: SC-2022-002721

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grain Workers Union, Local 333 ILWU v. Martin*, 2022 BCCRT 1233

BETWEEN:

GRAIN WORKERS UNION, LOCAL 333 ILWU

APPLICANT

AND:

JORDAN MARTIN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Grain Workers Union, Local 333 ILWU (GWU), is a trade union certified under the *Canada Labour Code* as the bargaining agent for employees of Viterra Incorporated (Viterra). Those employees include the respondent, Jordan

Martin, who is a GWU member. GWU is a chartered local of International Longshore & Warehouse Union Canada (ILWU). Viterra is not a party to this dispute.

2. Following the process set out in its constitution and bylaws, which included a hearing, GWU imposed disciplinary fines against Mr. Martin totalling \$1,663.60. Mr. Martin unsuccessfully appealed the fines internally and to ILWUC. To date, Mr. Martin has not paid the fines. GWU says the fines are a debt and asks the Civil Resolution Tribunal (CRT) to “enforce the debt.” GWU is represented by its president.
3. Mr. Martin says the fines were not justified. He also says that courts have ruled that unions cannot use the courts, and by extension, the CRT, to enforce fines. Mr. Martin represents himself.
4. As I explain below, I find GWU’s claim is not within the CRT’s jurisdiction, and I refuse to resolve it under section 11(1)(e) of the *Civil Resolution Tribunal Act (CRTA)*.

JURISDICTION AND PROCEDURE

5. These are the CRT’s formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the CRTA. Section 2 of the CRTA states that the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute’s parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Under section 11(1)(e) of the CRTA, the CRT may refuse to resolve a claim if the CRT is satisfied on the evidence that the claim is beyond the CRT’s jurisdiction.

8. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

10. The issue is whether the CRT has jurisdiction to order a union member, Mr. Martin, to pay fines imposed by his union, GWU.

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, GWU must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. The facts are largely undisputed. As noted, Mr. Martin is a member of GWU. In October 2020, Mr. Martin created and circulated in the workplace a petition concerning a legal dispute about overtime between GWU and Viterra. A GWU member alleged that Mr. Martin had breached GWU's constitution and bylaws. On December 4, GWU convened a hearing committee, which held a hearing and found that 4 of the alleged breaches were proven. The hearing committee assessed 4 fines totalling \$1,663.60 against Mr. Martin. The fines were based on his daily wages.
13. Mr. Martin unsuccessfully appealed the findings to an appeal committee. A further appeal to ILWUC was also unsuccessful. Under ILWUC's constitution, there was 1 further level of appeal available, but Mr. Martin did not pursue it, and the time for doing so has expired.

14. Mr. Martin's union membership dues were paid by regular deductions in each pay period that Viterra remitted to GWU. When Mr. Martin refused to pay the fines, GWU applied those regular remittances to the fines instead of membership dues. This led to Mr. Martin being in arrears of membership dues. GWU then took the position that Mr. Martin was no longer a member in good standing due to non-payment of dues. Because union membership is required as a condition of employment in the collective agreement, GWU wrote to Viterra advising that Mr. Martin was no longer eligible for employment. Viterra's position was that the payroll deductions were not authorized for fines, so there was no change in Mr. Martin's employment status. Viterra complained to the Canadian Industrial Relations Board that GWU contravened the *Canada Labour Code*. GWU and Viterra settled that complaint. Mr. Martin remains a GWU member, and has not paid the fines. Again, none of this is disputed.

Jurisdiction over union-imposed fines

15. The CRT's small claims jurisdiction is set out in CRTA section 118(1). The CRT may resolve "a claim for relief in the nature of" debt or damages, among other things that do not apply here, if the amount of the claims does not exceed \$5,000.

16. GWU says Mr. Martin owes GWU a \$1,663.60 debt resulting from the fines it imposed. GWU argues that its constitution and bylaws are enforceable as a contract that governs the relationship between GWU and Mr. Martin. It says courts have recognized that union constitutions are enforceable as contracts and can give rise to civil claims, relying on *Berry v. Pulley*, 2002 SCC 40.

17. In *Berry*, the Supreme Court of Canada confirmed that when a member joins a union, a relationship "in the nature of" a contract arises between the member and the union as a legal entity. The court also confirmed that a union has the status at common law to sue and be sued in matters relating to its labour relation functions and operations. I accept that GWU's relationship with Mr. Martin was contractual in nature and governed by GWU's constitution and bylaws.

18. GWU says the CRT has recognized and enforced debts arising under a union's constitution and bylaws, relying on *Ibraheem v. Canadian Merchant Service Guild*, 2020 BCCRT 61. In that decision, a CRT vice chair found the union continued to accept dues from the member after his membership lapsed. The vice chair found the member had no obligation to pay those dues and ordered the union to repay the portion of the dues it collected that was not barred by the *Limitation Act*. I find *Ibraheem* does not assist GWU because a fine imposed by a union is not the same as dues collected without legal authority. The vice chair in *Ibraheem* did not have to consider the issue here, which is whether a claim for payment of a union-imposed fine is a claim in the nature of debt or damages.
19. To date, the CRT has never ordered a union member to pay a fine imposed by a union, and GWU does not point to any court decisions making such an order. Mr. Martin says the Supreme Court of Canada (SCC) has ruled that unions cannot use the courts to enforce fines. I infer that he refers to 2 SCC decisions refusing leave to appeal decisions of lower courts. I will briefly discuss those lower court decisions here because I find they are instructive on the question of whether GWU's claim is in the nature of debt or damages.
20. In *Birch v. Union of Taxation Employees Local 70030*, 2007 CanLII 43894 (ON SC), the Ontario Superior Court of Justice described the case as a test case to decide if the federal union could sue its members in Small Claims Court to recover fines imposed against members who crossed the picket line. The court said that a union cannot recover in court penalties levied against members under the union's constitution without a statutory grant of authority (paragraph 57). Only Saskatchewan had granted such authority at the time, and the court noted there was no federal statutory grant of authority. GWU does not point to any statutory grant of authority allowing it to recover penalties in court or the CRT, and I am unable to find any.
21. *Birch* was upheld on appeal on other grounds (see *Birch v. Union of Taxation Employees, Local 70030*, 2008 ONCA 809, leave refused 2009 CanLII 23090 (SCC)). The Ontario Court of Appeal said the question of whether judicial enforcement of a

fine imposed by a “domestic organization” requires legislative sanction was best left for another case.

22. In *Telecommunications Workers Union Local 202 v. MacMillan*, 2008 ABPC 38 (affirmed 2008 ABQB 657, leave refused 2009 CanLII 23088 (SCC)), the union sought to recover a fine imposed on certain members under its constitution. The union asserted that its claim was for a debt, or alternatively damages. The Alberta Provincial Court found it was neither. The court found that it was being asked to confirm a penalty imposed through an internal disciplinary process for alleged misconduct, and therefore was being asked to impose a disciplinary measure on the union member, which it had no authority to do.
23. The court in *MacMillan* also endorsed the reasoning in *International Association of Machinists and Aerospace Workers v. Perks, Grandy and Hearn*, 1986 CanLII 3467 (NL SC). In *Hearn*, the Newfoundland Supreme Court discussed the definition of a civil debt in the context of a provincial court’s jurisdiction over debt. To be a civil debt, the claim must be for a specific amount stated in or ascertainable from the contract. When the calculation of fines is left up to other union members after the breach, the fines do not meet the criteria of a civil debt. As well, it would be contrary to public policy for a court (or the CRT) to enforce payment of penalties without the authority to review them for fairness (see *Hearn*, paragraphs 46-47).
24. Although cases from other provinces are not binding on me, I agree with the reasoning in *Birch*, *Hearn* and *MacMillan*. The jurisdiction of the Newfoundland and Labrador Provincial Court and the Alberta Provincial Court are similar to the CRT’s small claims jurisdiction in that each can hear claims for debt or damages up to prescribed monetary limits. The Ontario Small Claims Court’s jurisdiction is arguably broader, including “any action for the payment of money” below the prescribed amount. I find these decisions show that the law does not consider union-imposed fines to be debts.
25. I find the fines GWU imposed were penalties intended to discipline Mr. Martin. GWU’s constitution and bylaws allowed GWU to determine penalties, including fines,

“tailored to suit the severity of the offence.” The only limitation was that the fine could not exceed 6 days’ pay for each offence. I find the parties did not agree on a pre-determined penalty, since the penalty was not specified in the constitution and not determined until after Mr. Martin’s alleged breach. For these reasons, consistent with the cases discussed above, I find the fines are not debts within the meaning of the CRTA.

26. Can the fines be considered damages? In *MacMillan*, the court said the fines in that case did not represent damages in either contract, tort or equity because they did not relate to compensation for a loss the union suffered as a result of the member’s conduct. I find the same reasoning applies here. GWU does not assert any loss, and I find the fines were intended for disciplinary purposes rather than to compensate GWU.
27. Based on the above, I find GWU’s claim is not a claim for relief in the nature of debt or damages. I find the CRT does not have jurisdiction over the claim, and I refuse to resolve it under CRTA section 11(1)(e).
28. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As GWU was not successful, I dismiss its claim for reimbursement of CRT fees. Neither party claimed dispute-related expenses.

ORDER

29. I refuse to resolve GWU’s claims under section 11(1)(e) of the CRTA.

Micah Carmody, Tribunal Member