

Supreme Court clarifies jurisdiction of labour arbitrators in human rights issues

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The Supreme Court of Canada (the SCC) in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, has clarified that where a collective agreement provides a labour arbitrator with exclusive jurisdiction over issues arising out of a unionized workplace, this exclusivity applies to cover possible human rights breaches.

The SCC confirmed, therefore, that unless there is explicit legislative intent to give concurrent jurisdiction over the specific dispute, where the labour arbitrator has exclusive jurisdiction over dispute resolution, unionized employees cannot seek their own modes of redress, but must defer to the agreed-upon methods of dispute resolution in the collective bargaining agreement.

Background

The plaintiff employee, Linda Horrocks, was suspended in 2011 from her employment with the Northern Regional Health Authority for being under the influence of alcohol while at the workplace. She disclosed her addiction, after which her employer asked her to sign an agreement requiring her to abstain from alcohol. She refused to sign the agreement, and she was subsequently terminated. Her union filed a grievance with the labour arbitrator. The union won the grievance and the plaintiff was reinstated to work with conditions that were essentially the same terms as the agreement she had refused to sign. However, she was unable to comply with the terms of her employment and was terminated again. The plaintiff filed a complaint with the human rights commission alleging a breach of the *Human Right Code* due to discrimination on the basis of her disability.

At the Manitoba Human Rights Commission (the Commission), the employer health authority argued that the adjudicator did not have jurisdiction over the matter, as a result of the SCC's holding in *Weber v. Ontario Hydro*, [1995] 2 SCR 929. The employer argued that the plaintiff was a unionized employee, and the labour arbitrator had exclusive jurisdiction over the matter as a result of the jurisdiction conferred to the labour arbitrator in the collective agreement. The human rights adjudicator rejected this argument, and exercised jurisdiction of the matter. The adjudicator then held that there had been a breach of Ms. Horrocks' human rights.

Upon judicial review, Justice Edmond set aside the finding of the Commission. He held that

the central issue was whether the employer had just cause to terminate, and whether such a finding, including any human rights implications, was within the exclusive jurisdiction of the labour arbitrator.

The Court of Appeal agreed with the trial judge's finding that the termination matter fell within the exclusive jurisdiction of the labour arbitrator even where there are human rights violations, but that the Commission had jurisdiction because

- Ms. Horrocks had severed the employment and human rights aspects of her claim by not grieving the termination
- the discrimination claim transcended employment
- the union was not interested in pursuing arbitration

The Court of Appeal directed the Court of Queen's Bench to determine whether the decision on the merits of the discrimination complaint was reasonable.

Supreme Court of Canada decision

The SCC allowed the appeal and reinstated the trial judge's finding that the Commission did not have concurrent jurisdiction over the matter. Central to the majority's finding was the fact that past jurisprudence in *Weber* directed courts to give exclusive jurisdiction to labour arbitrators where the issue at dispute is the subject of a collective agreement.

The majority of the Court held that while human rights legislation does prevail over other acts, the obligation is simply that the rights and obligations in human rights legislation are to be respected above the rights and obligations in any other act. Moreover, the procedures of human rights legislation are not to take precedence over the procedures of other legislation unless the legislature has unequivocally and explicitly stated such an intention.

The majority also held that considering the context of a competing tribunal each time would have the effect of raising jurisdictional issues each time and cause confusion as to the appropriate forum in which to bring a dispute. These jurisdictional questions would be contrary to the principles of predictability, finality and certainty. The majority then went to hold that the presumption should be that the labour arbitrator has exclusive jurisdiction unless there is legislative intent to displace that presumption.

Justice Karakatsanis dissented and held that the jurisprudence and statutory scheme did not mean that labour arbitrators had exclusive jurisdiction in all cases. In her view, the jurisprudence directed courts to favour labour arbitration over civil resolution in the courts, but left open the possibility that two statutory bodies may have competing jurisdiction unless one body has explicitly ousted all other statutory bodies.

Furthermore, she held the majority's finding would create a barrier for access to justice. The union's duty to fair representation is a collective duty that would require balancing the needs of all unionized such that the union has the discretion not to grieve individual human rights breaches. Conferring exclusive jurisdiction to labour arbitrators would effectively prevent individuals from having human rights breaches addressed. As a result, Justice Karakatsanis held that the Court should allow concurrent jurisdiction over human rights issues, and then the Commission should adopt the practice of declining jurisdiction unless it found the labour arbitrator's findings to be unreasonable or unfair.

The majority explicitly rejected this suggestion, citing the fact that human rights tribunals had adopted the practice of holding that they have concurrent jurisdiction and exercising that jurisdiction even where parallel labour arbitration proceedings are taking place. The

majority expressed concern for a duplicity in proceedings and the risk that human rights tribunals may essentially subvert the authority of labour arbitrators where, in the view of the human rights tribunal, the decision of the labour arbitrator is unfair. Moreover, the majority found that the union had a duty of fair representation and should work to ensure that all the claims of the individual, including human rights breaches, are fairly addressed.

Conclusion

This decision answers the question as to whether individual union members can seek redress on their own. Essentially, the SCC has directed unionized employees to first seek labour arbitration where their collective bargaining agreement gives exclusive jurisdiction to a labour arbitrator. For employers of unionized workforces, this decision provides much welcome certainty to the statutory scheme and will prevent the duplication of proceedings regarding the same employee.