

BCMEA – Illegal Strike Application – CIRB Case No. 26503 – C

Summary:

On December 20, 2007 the CIRB released its decision in the above matter. It declared that the Longshore Unions and their members were participating in an illegal strike. It further ordered the Unions and their members to cease and desist in that illegal strike. The order does not take effect until January 8, 2007.

Synopsis of Decision:

The Board addressed two main issues in its decision. First, what effect the Attorney General's reference of certain issues to the Federal Court of Appeal had on the Board's ability to deal with the BCMEA's application? Second, were the requirements for an illegal strike met?

The Board canvassed the various arguments advanced by all the parties and strictly applied the language of section 18.3(2) of the Federal Court Act. It agreed with the BCMEA's submissions and found that once the issues of "constitutional validity, applicability or operability of an Act of Parliament or of regulations" were referred to the Federal Court, the Court has the jurisdiction to address those questions. The Board further held that the grant of such jurisdiction meant that the Board had lost the ability to continue its hearing into the same issues.

After making this finding, the Board then addressed the issue of whether it should continue to address the BCMEA's application while the "defence" issues were before the Federal Court of Appeal. The Board again agreed with the BCMEA's submissions and held that a labour board must issue decisions in illegal strike applications expeditiously and defer to the Court's expertise regarding appropriate interim measures in the context of any reference.

The Board then moved onto the issue of whether the Unions' and their members' conduct constituted an illegal strike under the Code. The Board found that there was concerted activity in the Unions instructing and their members refusing to apply for security clearances. The Board also found the test is an objective one, and that the Unions' and their members' beliefs about the legality of the security regulations did not impact the definition of strike found in the Code. The Board further held that the fact that any disruption would occur in the future was not a defence to a concerted refusal occurring in the present.

The Board declared that the Unions and their members were participating in an illegal strike and ordered that conduct to cease. It ordered the BCMEA via its member companies to post copies of its order at conspicuous locations in all of its affected and necessary facilities.

The Union member of the three person panel issued dissenting reasons. Mr. Rivard held that the Board should not have proceeded to determine whether there was an illegal strike until the validity of the security regulations was determined by the Federal Court of Appeal.

It is also important to note that the majority delayed the effect of its order until January 8, 2007. Its reasons for doing so were to allow the "parties time to consider their next legal steps." In our view this is an invitation to the Unions to apply to the Federal Court for a stay of either the Board's decision, the security regulations, or both. Counsel for the Foremen has contacted us and confirmed that it is their intention to make such an application.