Citation: IB S. Petersen v. I.L.W.U. Ship & Dock Foremen Local 514
2002 BCSC 834

Date: 20020530
Docket: L012688
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

IB S. PETERSEN

SOLICITOR

AND:

I.L.W.U. SHIP & DOCK FOREMEN – LOCAL 514

CLIENT

REASONS FOR DECISION

OF

MASTER BARBER
(AS REGISTRAR)

Counsel for the Solicitor: G. Grunberg

Counsel for the Client: A. Thiele

Date and Place of Hearing: November 20, 2001 and April 18, 2002
Vancouver, BC

[1] This matter comes before me pursuant to an appointment taken out by Mr. Petersen on October 4, 2001 for a review of his bill dated October 17, 2000.

[2] Mr Petersen appeared for Mr. Harris on a complaint to the Canada Industrial Relations Board that the union violated s. 37 of the **Canada Labour Code** in failing to file a grievance on Mr. Harris' behalf after he was dismissed from his employment with Empire International Stevedores Ltd. On December 17, 1999 the CIRB composed of Mr. Richard I. Hornung, Q.C. gave its decision which provided:

> [26] Accordingly, the Board orders:
>
> (1) that the Union filed a grievance on behalf of Harris at step 3 of the grievance procedure (the referral of the grievance at this level – in the event of Harris' success – was agreed to by all the parties including the Employer)
>
> (2) that the time limits applicable for filing of the grievance and its referral to arbitration are hereby waived;
>
> (3) that the Union assume 75% of the legal fees and reasonable expenses that the complainant incurred with respect to the preparation and presentation of the section 37 complaint before the Board;
>
> (4) that the Union pay the full legal fees and reasonable expenses that the complainant will incur with respect to the preparation and hearing of his grievance at arbitration;
>
> (5) that the complainant have the right to choose counsel to represent him in that regard;

> (6) that the Union cooperate with the complainant and his counsel to ensure that the grievance is heard in as expeditious and fair manner as possible;
>
> (7) that the Union shall be responsible for any damages or compensation payable to Harris from the date of his dismissal to the date of the commencement of this hearing, i.e. December 15, 1998. Thereafter, the compensation shall be the responsibility of the employer;
>
> [27] The Board retains jurisdiction with respect to implementation of this order.

[3] Mr. Corrigan, acting for the Union, asked Mr. Hornung to review the matter and on February 17, 2000 Mr. Hornung wrote, *inter alia,*

> 1. Failing a resolution of this matter emanating from the step 3 meeting, the matter is to proceed to arbitration pursuant to the terms ordered by the board;
>
> 2. The Union is not entitled to “investigate” the grievance before deciding whether or not it shall proceed to arbitration

[4] The Union appealed that decision of Mr. Hornung’s and on April 3, 2000 the reconsideration pursuant to s. 18 of the **Canada Labour Code** was given. At that time Mr. Tobin, the Vice-Chairperson, wrote:

> The applicants have not brought forward any new facts that would likely have caused the original panel to issue a different decision nor have they demonstrated that the original panel committed an error of law or policy or a denial of natural justice. The applications are therefore disallowed.

[5] The employer and the union then appealed to the Federal Court by way of requesting judicial review. It was thought that that matter would come on for hearing in the Federal Court before the arbitration would be set. In the meantime the union, through Mr. Corrigan, corresponded with Mr. Petersen. On June 22, 2000 – Exhibit "7", Tab 21, Mr. Corrigan wrote, *inter alia*,

> while you are conducting the proceedings on behalf of the union it is important that the union be involved in preparation for the hearing particularly when it involves the evidence of its member.
>
> We do not think that this in any way prejudices your representation of Mr. Harris. Instead it recognises that you are acting for the union and being paid by the union. Under those circumstances the union should be aware of the progress of the case and the evidence to be presented.

[6] This does not mean though that matters went smoothly and that there was no conflict between Mr. Petersen and Mr. Corrigan. The evidence and the correspondence both indicate disagreements. Nevertheless matters did not come to a head until the issue of whether or not the arbitration hearing should be adjourned.

[7] As it turned out the hearing in the Federal Court could not be set until November 1st and the date for the arbitration was agreed upon for September 25th. Originally, the union

felt obliged to agree to the arbitration dates as it did not want to do anything which implied that it was acting contrary to the order of the board made December 17, 1999.

[8] As the time approached for the arbitration hearing Mr. Corrigan made representations to Mr. Petersen for the arbitration hearing to be adjourned. It was his view that as the Federal Court proceeding was only about a month after the arbitration hearing that there was no prejudice to Mr. Harris. He felt that extra costs might be incurred unnecessarily. Mr. Petersen had instructions from Mr. Harris to proceed. Nevertheless Mr. Petersen put both points of view to the arbitrator as requested by Mr. Corrigan – Tab 13 of Exhibit "7". Mr. Corrigan in his testimony was extremely critical of Mr. Petersen and said that that letter did not fairly put the position of the union. In my view taking into account the dual role that Mr. Petersen seemed to assume I think the letter was fair in all the circumstances. In addition when one views Mr. Kelleher, the arbitrator's, letter – Exhibit "8" it is clear that he understood the economic point being made and ruled against an adjournment. Mr. Corrigan had made it clear that if the arbitration was not adjourned the union would not pay the bill.

[9] The union had paid Mr. Petersen's bills up until this time. At issue is the bill that Mr. Petersen rendered first of all to Mr. Harris and then more laterally to the union for the arbitration hearing. One issue that arose before me was whether or not the union was "a person charged" as defined by the **Legal Profession Act.** There the definition is –

> ...person charged includes a person who has agreed to pay for legal services, whether or not the services were provided on that persons behalf...

In addition the union took the position that Mr. Petersen's services were of no value to the client as Mr. Harris had a losing case. In that regard while that may have been so, the only evidence before me was that Mr. Harris wished to proceed despite his lawyer's advice. There was no evidence to indicate that Mr. Petersen did other than act properly for Mr. Harris. Thus, subject to the determination of whether or not the union is "a person charged", in my view Mr. Petersen's bill is proper taking into account the principals set forth in the **Legal Profession Act**.

[10] There are many instances where a lawyer may rightfully charge someone or an entity for whom they have not directly provided a service. The definition of "person charged" in the **Legal Profession Act** contemplates this. One such instance of this would be where a mortgagor pays for the fees incurred by

a mortgagee in certain instances. This though is usually tied to the document setting out the arrangement between the mortgagor and the mortgagee. In this case the decision of the board of December 17, 1999 was still in effect at the time of the arbitration. There is no question in my mind but that the union under that order was responsible for Mr. Petersen's fee for acting on the arbitration. In addition the union acknowledged their joint retainer of Mr. Petersen up until the time of the disagreement as to whether or not the arbitration ought to be adjourned. I find Mr. Petersen was obligated to proceed with the arbitration pursuant to Mr. Harris' instructions. The definition of person charged can be read in a expansive way such that it would include the situation, as here, where one is ordered to pay the fees of another. Here the union clearly in its mind retained Mr. Petersen. The argument that Mr. Petersen's work had no value is of no merit.

[11] On November 3, 2000, Evans, J.A., wrote:

> For these reasons which apply to files A-15-00 and A-290-00 the application for judicial review is allowed and the decision of the board and its reconsideration set aside. The matter is not remitted to the board because in a decision dated October 12, 2000 an arbitrator has recently dismissed the respondents grievance. The union shall have its costs of this application.

No decision or direction was given with respect to the fees paid or incurred pursuant to the boards order.

[12] The union argued that because of the Federal Court decision the fees at issue in this review would not be payable because the order of the board was set aside. This argument ignores the fact that at the time the fees were incurred there was a validly existing board order. If the union had wished such an order it should have requested it. Secondly, the Federal Court decision does not affect the union's right, if any, to pursue Mr. Harris for any of the costs incurred on his behalf.

[13] Therefore I find that the union is obligated to pay Mr. Petersen's account which was agreed upon at $12,513.40.

"Master Barber as Registrar"