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GOVERNMENT OF PRINCE EDWARD ISLAND
LABOUR RELATIONS BOARD

J. J. Revell, B. Comm., M.B.A.
Chairman

Wayne S. MacKinnon
Chief Executive Officer

DEPARTMENT OF LABOUR
P.O. BOX 2000,
CHARLOTTETOWN
PRINCE EDWARD ISLAND

UNFAIR LABOUR PRACTICE COMPLAINT

BETWEEN:

CLESSON OLLERHEAD (Member)
Local 721C, International Union of Operating Engineers COMPLAINANT

-and-

NEIL'S AMBULANCE SERVICE INCORPORATED RESPONDENT

The complaint was filed with the Labour Relations Board on September 30, 1975 and processed in accordance with the Regulations of the Board. Attempts to negotiate a settlement of the complaint were unsuccessful and the matter was scheduled for hearing. Hearings were held on November 20th, December 3rd and December 19, 1975.

The Complaint alleges that "Mr. Ollerhead was fired upon the excuse of a personal matter of the complainant's wife being harmful to the business". The union and complainant claimed discrimination because of membership in the trade union.

The Board has determined the relevant facts to be as follows:

- 1) Clesson Ollerhead was employed by Neil's Ambulance Service from approximately April 4, 1975 to September 19, 1975. During that period of time Mr. Ollerhead performed the duties of ambulance driver and assistant. The Board is satisfied that Mr. Ollerhead was a satisfactory employee, that Mr. MacDonald was not seriously concerned about his ability to perform his work, and that no significant warnings or disciplinary action had been taken against Mr. Ollerhead as a result of his work.
- 2) The respondent company alleges that Mr. Ollerhead was discharged "as a result of lack of confidence exerted by management". The incidents that resulted in this lack of confidence, in the opinion of the Board, may be summarized as follows:
 - (a) The respondent has presented evidence in response to the complainant's allegation that the discharge was related to a personal matter of the complainant's wife being harmful to the business, that certain relationships between the complainant's wife and fellow employees of Mr. Ollerhead were damaging to the morale of other employees, and consequently harmful to the business.
 - (b) The respondent company alleges in evidence that an alleged theft of clothing from a Charlottetown clothing store by Mrs. Ollerhead and the incidents surrounding the return of the goods were such as to damage the confidence the employer had in Mr. Ollerhead. The respondent company also alleges that the reputation of the firm would be damaged directly as a result of publicity which might be attached to the alleged theft.

- (c) The respondent company alleges that property of accident victims was missing in at least one case involving Mr. Ollerhead, and while direct allegations of the taking of such property were not made, the respondent company has argued that a certain lack of confidence resulted.
- 3) An Application for Certification was filed by the trade union on September 11, 1975. The Application was processed in the normal manner and the respondent company was made aware of the Application by registered mail on September 12, 1975.
 - 4) An informal meeting of employees of the respondent company was held in Kings Square at a location immediately across from the employer's premises. While it is uncertain as to how the meeting was arranged, it is clear that Mr. MacDonald, while making no threats to the employees either individually or collectively, very specifically stated his opposition to the formation of the trade union, and as several witnesses testified, including Mr. MacDonald, used the phrase: "Good luck, boys, but I am going to fight you."
 - 5) The complainant alleges that Neil MacDonald accused the complainant of drinking on the job. Evidence is clear that no such accusation was made and if anything, Mr. Ollerhead may have misinterpreted Mr. MacDonald's concern to all employees over the presence of a beer cup in one of the company's ambulances.

The Board, in reaching its decision on the matter, is aware of the serious nature of 'discharge'. In industrial relations terms this charge amounts to the equivalent of capital punishment, and Section 10, subsection 1 of the Act, recognizing the seriousness of the matter, states, "Where such complaint arises out of the suspension, transfer, refusal to transfer, lay off, discharge or change the status of an employee or the refusal to employ or re-hire any person, the burden of proof that such suspension, transfer, refusal to transfer, lay off, discharge, change of status, or refusal to employ or re-hire was for good and sufficient reason and not in violation of Section 8, shall be upon the person charged."

The Act also recognizes the right of the employer to operate his business in a normal manner. Section 8, subsection 4, and Section 8, subsection 5, gives direct authorization to the employer to take action in this regard:

(Section 8, subsection 4) "Nothing in this part restricts or interferes with the right of an employer to suspend, transfer, lay off or discharge employees for good and sufficient cause."

(Section 8, subsection 5) "Nothing in this Part shall be deemed to deprive an employer of his freedom:

- (a) to express his views on collective bargaining or the terms and conditions of employment so long as he does not use coercion, intimidation, threats, or undue influence;
- (b) to permit an employee or the bargaining committee or officers or other representatives of a trade union to confer with him or to attend to the business of the trade union without deduction of wages for loss of time so occupied;
- (c) to provide free transportation to representatives of a trade union for purposes of collective bargaining; or
- (d) to permit a trade union the use of the employer's premises for the purposes of the trade union."

FINDING

The Board, upon review of all of the evidence and with particular concern for the difficult areas surrounding the complaint, particularly with reference to the conduct of third parties, has made the following determination:

1. The Board is satisfied that the complainant, Mr. Ollerhead, was a satisfactory employee in the normal sense of that term.
2. The Board is satisfied that the allegations of a lack of confidence in Mr. Ollerhead, due to the conduct of his employment circumstances or his trustworthiness in dealing with accident victims or the public has not been substantiated and cannot be accepted as sufficient grounds for his discharge.
3. The Board is satisfied that alleged relationships of Mr. Ollerhead's wife with certain other employees of the company has not had an effect on the morale or efficiency of the respondent company's work, and cannot be considered as sufficient grounds for Mr. Ollerhead's discharge.
4. The Board is satisfied, in the evidence presented, that Mr. Ollerhead was not personally involved in any alleged thefts of clothing materials, and that when made aware of the alleged theft cooperated with Mr. MacDonald, and with Mr. MacDonald's approval assisted in the return of the goods. The Board is not satisfied that Mr. Ollerhead's continued employment with the firm would damage the firm's reputation, and the Board cannot support the contention that an employee may be discharged for the unproven actions of his wife, nor can the Board approve such a discharge.
5. The Board, in determining its decision in the matter, is particularly concerned with the timing of the dismissal. The fact that Mr. Ollerhead had been party to the formation of the trace union, and was actively promoting it with other employees, when coupled with Mr. MacDonald's admitted opposition to the union, throws a great deal of suspicion on the discharge. When viewed against the very flimsy reasons alleged by the company as grounds for discharge, the Board must find that there was an overtone of discrimination as a result of Mr. Ollerhead's union activity. The Board cannot find credible the fact that Mr. Ollerhead should appear to be a satisfactory employee, at least to the date of the filing of the Application for Certification, had not been disciplined or otherwise cautioned about unsatisfactory employment, but should then be found so unsatisfactory as to warrant discharge several days following the filing of the Application for Certification. The alleged lack of confidence resulting from the alleged theft of the clothing, as referred to above, does not in any way lessen the Board's suspicion that the discharge of Clesson Ollerhead was the result of his union activity.


As a result of this finding, the Board makes the following order:

1. Mr. Ollerhead shall be reinstated in his previous position of employment effective February 16, 1976.
2. The respondent company, Neil's Ambulance Service, is to compensate Clesson Ollerhead for wages lost as a result of his discharge between the period of his discharge, September 19, 1975 and November 30, 1975. In choosing these dates, the Board takes cognizance of Mr. Ollerhead's seeking of alternate employment following his discharge and the availability of unemployment insurance and related benefits.

This decision was made by the Labour Relations Board on January 21, 1976 and is issued over the hand of the Chief Executive Officer.

Dated at Charlottetown this 3rd day of February, 1976.

Labour Relations Board panel
J. I. Revell, Chairman
Leo MacCormick
Joseph Murphy


Wayne S. MacKinnon
Chief Executive Officer