



GOVERNMENT OF PRINCE EDWARD ISLAND
LABOUR RELATIONS BOARD

M. Lynn Murray, B.B.A., LL.B.
Chairman

Roy J. Doucette
Chief Executive Officer

DEPARTMENT OF LABOUR
P.O. BOX 2000
CHARLOTTETOWN
PRINCE EDWARD ISLAND
C1A 7N8

UNFAIR LABOUR PRACTICE COMPLAINT

BETWEEN:

CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 3324

COMPLAINANT;

AND: NEIL'S AMBULANCE SERVICE INCORPORATED

RESPONDENT

Counsel for the Applicant - Diane Bourque

Counsel for the Respondent - William G. Lea

This matter was initiated by a formal Unfair Labour Practice Complaint (Form 11) dated September 13, 1988. This Complaint alleged that the dismissal of George Carragher from his employment with Neil's Ambulance Service Incorporated arose due to Mr. Carragher's decision to exercise his legal right to participate in an attempt to have employees of the Respondent company organized for collective bargaining purposes.

Sufficient evidence was adduced that Mr. Carragher was dismissed from his duties with the Respondent company effective September 7, 1988. Evidence also established that, at the time of this dismissal, Mr. Carragher was active in the movement to have the employees of the Respondent company unionized. In fact, the evidence showed that Mr. Carragher was elected President of the employees' organization formed for unionization purposes.

As was established by Section 10 (5) of the Labour Act, the onus was placed upon the Respondent company to establish that Mr. Carragher's dismissal "was for good and sufficient reason and not in violation of Section 9" Section 10 (5) reads as follows:

"10 (5) Where any such complaint arises out of the suspension, transfer, refusal to transfer, lay off, discharge or change of status of an employee or the refusal to employ or re-hire any person, the burden of proof that the 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 9, is upon the person charged."

Legal counsel for the Respondent has argued that the imposition of this onus upon the Respondent constitutes a violation of "the presumption of innocence" provisions contained within the Canadian Charter of Rights and Freedoms." The Respondent's counsel asked the Board to rule that section 10 (5) of the Labour Act is unconstitutional. In response to this request, the Board has determined that it does not have the jurisdiction to determine such a question. The Board itself is a "creature of the Labour Act" in that its very existence is established by this statute. The Board finds that it is empowered to implement the statutory provisions of the Labour Act but is not empowered to question the validity of the legislation, and is certainly not competent to rule on the constitutionality of the legislation. Therefore the Board rules that it will proceed with this matter on the basis that the legislation, as it currently exists, is valid.

Evidence was adduced by, or on behalf of the Respondent in an

attempt to satisfy the statutory onus placed upon it to establish, on the balance of probabilities, that the dismissal of Mr. Carragher "was for good and sufficient reason and not in violation of section 9 of the Labour Act" Evidence was adduced in support of the Respondent's position, and further evidence was adduced in support of the Complainant's position. This evidence is a matter of record and thus will not be recited in any great detail within this decision.

To summarize the Respondent's position in this matter, it was suggested that the dismissal of Mr. Carragher was for good and sufficient reasons in that the president/owner of the Respondent company had lost confidence in Mr. Carragher for several reasons stemming from several incidents including:

- (1) an alleged incident where a scheduled ambulance call was delayed for a period of time due to the personal business of Mr. Carragher (Canadian Tire incident);
- (2) several alleged incidents when Mr. Carragher left the "base station" of the business for periods of time during regular working hours;
- (3) an alleged incident when Mr. Carragher left the "base station" on personal business leaving only an unqualified employee to answer emergency calls;
- (4) several alleged incidents where the morale of the workplace was adversely affected by Mr. Carragher;
- (5) several alleged incidents when Mr. Carragher maligned or was insubordinate to Mr. Neil MacDonald, the president/owner of the Respondent company.

The Complainant countered with evidence suggesting that the actions of Mr. Carragher were not abnormal actions, in that such actions were commonplace at the Respondent's workplace both prior to and subsequent to Mr. Carragher's dismissal; and such actions have not led to consistent disciplinary actions or other dismissals.

The Board has considered this matter and finds that, although Mr. Carragher's conduct was not appropriate conduct for a person employed as an ambulance driver/attendant, the Respondent has not satisfied the onus placed upon it to establish, on the balance of probabilities, that the dismissal of Mr. Carragher was for good and sufficient reason and not in violation of section 9 of the Labour Act. The actions of Mr. Carragher could well have given rise to some form of disciplinary action, but the Board has taken cognizance of the fact that no formal disciplinary action was taken against Mr. Carragher in regard to any of the above noted alleged incidents. In fact, it is questionable as to whether any informal disciplinary action was taken against Mr. Carragher. Also it is noteworthy that no disciplinary action (either formal or informal) was taken against Philip Pollard (who was allegedly involved in the Canadian Tire incident) or against any other employee who undertook actions similar in nature to those attributed to Mr. Carragher.

Furthermore, the Board has great concern regarding the timing involved with this dismissal. The evidence clearly shows that on September 1, 1988, Mr. Carragher participated in a meeting relating to the possible unionization of the employees of the Respondent company. Furthermore Mr. Carragher was elected President of the employee organization. Less than one (1) week later, Mr. Carragher was dismissed. There is contradictory evidence before this Board as to whether Neil MacDonald was aware of union activity at the workplace prior to Mr. Carragher's dismissal. Although Mr. MacDonald has denied knowledge of union activity at the workplace until subsequent to Mr. Carragher's dismissal, the evidence of Mr. Randall Morgan suggests that Mr. MacDonald was aware of union activity prior to the dismissal. Also, although Mr. Morgan did not testify that Mr. Carragher's name was specifically mentioned to or by Mr. MacDonald vis-a-vis union activity, Mr. MacDonald did testify, within direct examination, that he considered Mr. Carragher the "ringleader" of employee discontent at the workplace.

The Board finds that the timing of this dismissal, being less than one (1) week after the first meeting of the employee organization (where Mr. Carragher was elected President) is suspicious. The Respondent provided no evidence that Mr. Carragher's work performance was substandard; furthermore the Respondent provided no evidence of formal disciplinary actions taken against Mr. Carragher prior to his dismissal. The Board finds the alleged "loss of confidence" in Mr. Carragher is not supported by formal disciplinary action or even strong informal disciplinary action. The Board is also concerned about the apparent singling out of Mr. Carragher in this matter for disciplinary action, in light of the fact that other employees have acted in similar ways without being subjected to similar disciplinary actions.

Accordingly the Board is not satisfied that the Respondent has satisfied the onus placed upon it to establish, on the balance of probabilities, that the dismissal of George Carragher was "for good and sufficient reasons and not in violation of section 9 of the Labour Act." Therefore this Board finds that the Respondent's actions in this matter constitute a violation of section 9 of the Labour Act.

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

(1) that George Carragher shall be reinstated in his previous position with the Respondent company effective January 23, 1989.

(2) that the Respondent company is to compensate George Carragher for wages and benefits lost as a result of his dismissal between the period of his discharge, September 18, 1988 and the date of reinstatement, January 23, 1989. In choosing these dates, the Board recognizes that Mr. Carragher sought, and to some extent obtained, alternate employment following his dismissal and the availability of unemployment insurance and related benefits.

(3) that, for the purposes of the Application for Certification relative to the Respondent company, Mr. George Carragher will be considered as an employee of the Respondent company as of the date of Application in said matter.

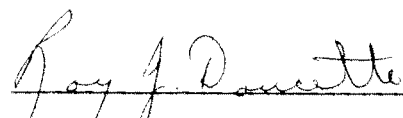
(4) that a copy of this decision will be personally served upon George Carragher and upon an officer of the Respondent company and shall also be sent to legal counsel for each party by mail.

THIS DECISION was made by the Labour Relations Board on January 17, 1989 and issued over the hand of the Chief Executive Officer.

DATED at Charlottetown this 17th day of
January, 1989.

PANEL:

Aidan Sheridan, Vice-Chairman
Harry Snow, Member
Ted Crockett, Member



Roy J. Doucette
Chief Executive Officer