

Court rules former police officer must arbitrate dispute with supervisor

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An Ontario court has again been called upon to apply the principles set out in *Weber v. Ontario Hydro*, the 1995 decision of the Supreme Court of Canada limiting the jurisdiction of courts to hear claims arising out of disputes in unionized workplaces. In *Brunet v. Ottawa Police Assn.* (May 26, 2004), the plaintiff Brunet attempted to sue a superior police officer, claiming that she had maliciously interfered with his attempt to transfer into the Ottawa Police Tactical Unit and then had unfairly denied his request for a leave of absence to pursue other employment. Brunet, a 10-year veteran of the Ottawa Police Services, approached his union on two occasions and requested that it grieve the failures to transfer him to the Tactical Unit and grant the leave of absence. The union refused to pursue the grievances.

Eventually, Brunet resigned from the police force. He started a court action against Dunlop, his superior officer, and the union. He claimed that Dunlop's actions constituted "interference with commercial relations, unlawful interference with economic interests, [and] intentional and/or negligent infliction of mental suffering". He also alleged that Dunlop had breached section 7 of the *Canadian Charter of Rights and Freedoms*, the provision that guarantees the right to life, liberty and security of the person.

Dunlop moved to have Brunet's action dismissed on the basis that the court lacked jurisdiction over what was essentially a labour relations matter. The court agreed. It noted that, in order to determine whether a dispute can be heard in court or before an arbitrator, it is necessary to consider both the essential nature of the dispute and the ambit of the collective agreement. If the essential character of a dispute arises either explicitly or implicitly from the interpretation, application, administration or violation of a collective agreement, a court has no jurisdiction to hear the matter. In this case, the court held, the dispute was a matter arising under the collective agreement:

"The essential character of the dispute between Brunet and Dunlop is that Dunlop allegedly blocked Brunet's transfer to the Ottawa Police Tactical Unit, even though he had the qualifications, training and seniority to get such a transfer. As well, she allegedly denied him a leave of absence in circumstances where other officers had been granted leave. In other words, the allegation is that Dunlop ... dealt with Brunet ... in an unfair and discriminatory manner. The Collective Agreement ... explicitly deals with the issue of transfers and leaves of absence. It states that the Board has the exclusive right to deal with transfers and to direct employees. It also states that no member will be dealt with adversely without

reasonable cause and that all members will be dealt with fairly and without discrimination. Therefore the Agreement specifically speaks to the issues that are alive in the litigation between Brunet and Dunlop."

The Court noted that there was no suggestion that arbitration – as opposed to litigation – was incapable of granting Brunet a full remedy. Nor was the essential nature of the dispute altered by either the fact that Brunet was suing Dunlop rather than the employer or the allegation of malice and improper motive on Dunlop's part.

Finally, the Court held that the allegation that Brunet's *Charter* rights had been breached did not give the Court jurisdiction to hear the matter. In the circumstances of this case, an arbitration board would be competent to grant a remedy.

Accordingly, the Court dismissed Brunet's action against Dunlop.

In Our View

It should be noted that, in this case, the Court declined jurisdiction despite the fact that Brunet had attempted to grieve Dunlop's actions but had been barred from doing so by his union. Therefore, the fact that an employee is unable to take his or her dispute to arbitration will not cause a court to take jurisdiction of the dispute. If the subject matter of the dispute could have been properly dealt with under the collective agreement, the court will in all likelihood not hear the matter, even if the arbitration mechanism has been denied to the litigant.

For other articles dealing with *Weber*, see ["Fine-tuning *Weber*: unionized employee can sue for malicious prosecution"](#) on our Publications page and ["Jurisdiction of courts and arbitrators: the Supreme Court of Canada applies *Weber*"](#) on our What's New page.

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