

LETTER DECISION
BCLRB No. B415/95

November 20, 1995

To Interested Parties:

Re: Calvin Washington ("Washington") -and- Communications, Energy
and Paperworkers Union of Canada, Local 603 (the
"Union")
(Section 10(1) and (2) - Case No. 19207)

(i) Introduction

1 This is an application under Section 10 of the *Labour Relations Code* alleging that the
Union violated the principles of natural justice in the course of internal union disciplinary
proceedings concerning Calvin Washington.

2 In BCLRB No. B181/95, an interim decision in this matter, I set out three areas of
concern about the disciplinary proceedings taken against Washington in light of the natural justice
requirements of Section 10. I also provided the parties an opportunity to reach a mutually
agreeable resolution but remained seized in the event that the parties were unable to do so. The
parties have been unable to reach a resolution, thus it is necessary to provide a final
determination in this matter.

(ii) Decision

3 The three problematic aspects of the disciplinary process set out in BCLRB No. B181/95
are:

(1) A lack of opportunity for Washington to know the case against him prior to a decision being made by the Unity Committee. I do not find that the Local Union was required to hold a hearing and entertain *viva voce* evidence once Washington had chosen not to request a hearing. However, the subsequent choice by the Disciplinary Committee to proceed by way of written submissions, while not improper in and of itself, did not carry with it the protection of allowing the accused to know of the case he had to meet, since neither the statement of his accuser or the statements of witnesses were made available to him.

(2) Insufficient notice of the membership meeting at which the decision of the Disciplinary Committee was considered. Washington, the affected member, was not given individual notice of the meeting. The only notice was a posting in the workplace which indicated the time, date and time of a general membership meeting and that there would be a report from the "Unity" Committee. While it is possible that Local Union members were expected to know that the "Unity" Committee was responsible for disciplinary matters, there is nothing on the face of the notice to indicate that the Unity Committee would be dealing with Washington's case on that particular night.

(3) Misdirection by the chair of the membership meeting to the union members as to the authority which they had in dealing with the report of the Committee. The chairperson instructing the meeting stated that the matter of guilt could not be dealt with and that only the penalty could be affected. However,

Article 17.03.21 of the Constitution provides authority to either reject the charge entirely or to modify the penalty. Given the direction of the chairperson the membership would not have been made aware of their authority to reject the charge against Washington. (para. 21-23)

I hereby find that each of these three areas of concern constitute violations of Section 10 of the Code.

4 Since the decision in BCLRB No. B181/95 the Board, in *Marilyn Coleman and Doug Leaney -and- Darlene Rentz and Office and Technical Employees' Union, Local 378*, BCLRB No. B282/95, substantially reviewed the approach the Board takes in applying Section 10. The principles set out in that decision reinforce my conclusion that the union breached the natural justice requirement in Section 10.

(iii) Remedy

5 A remedy should strive to correct wrongs by placing the wronged party in the position they would have been in but for the wrongs as far as is possible or reasonable in the circumstances. In this case, one of the wrongs was a lack of opportunity for Washington to know the case against him prior to the original decision. The other two wrongs concerned the membership meeting at which the original decision was considered.

6 The failure of the Union to provide Washington with copies of the submissions of his accuser, Sawyer, and the submissions of witnesses on behalf of Sawyer carries with it an unknown and unknowable impact. Had Washington been provided with those submissions prior to making his submission to the Unity Committee, it might have affected the determination of the Unity Committee, or it might have had no effect. What is essential is that the Board cannot speculate about what might have been if the proper procedure had been followed. We can only recognize that the failure to provide Washington with copies of the submissions opens the door to the potential for a different outcome. Given this potential, the decision of the Unity Committee is thus cast in a shadow that can only be cured by declaring their decision to be null and void.

7 This determination gives the Union the option of now proceeding with the disciplinary action against Washington from a point prior to the decision of the Unity Committee. If the Union chooses to proceed with the disciplinary action from that point they can do so only after providing Washington with copies of the relevant submissions.

8 I do not find that any other specific remedial order to be necessary. In particular I do not find it necessary to deal with the breaches of natural justice concerning the membership meeting in February 1994. The decision at that meeting and any subsequent decisions concerning Washington are now void since the original disciplinary determination by the Unity Committee has been declared null and void.

9 In reaching this decision, I recognize that there is a risk that members of the Union may view the decision as a demonstration of form over substance. However, the importance of natural justice protection provided in Section 10 is such that there will be times when "doing it the right way" is just as if not more important than the final outcome. This is one of those times.

LABOUR RELATIONS BOARD

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