

Seder (Re)

British Columbia Labour Relations Board Decisions

British Columbia Labour Relations Board

Panel: Andres Barker, Vice-Chair

Decision: August 10, 2022.

Case No.: 2021-000746

[2022] B.C.L.R.B.D. No. 88 | 2022 BCLRB 88 | 101 C.L.R.B.R. (3d) 263

Richard **Seder** (the "Applicant"), and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local No. 516 (Refrigeration Service and Installation Workers' Union) ("UA 516"), and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada ("UA International")

(63 paras.)

Appearances

Gregory J. Heywood, for the Applicant.

Brandon Quinn, for UA 516.

J. Robert W. Blair and Cherie Klassen, for UA International.

DECISION OF THE BOARD

I. NATURE OF THE APPLICATION

1 The Applicant applies under Section 10 of the *Labour Relations Code* (the "Code"), alleging UA International and UA 516 breached his right to natural justice and discriminated against him in relation to an internal trial which resulted in the Applicant's expulsion from UA International and UA 516 membership (the "Application").

2 In response, both UA International and UA 516 say Section 10 does not apply because UA International is not a "trade union" under the Code. In the alternative, they say they did not breach the Applicant's right to natural justice or discriminate against the Applicant.

3 I find I can decide this matter on the basis of the parties' submissions and the attached material.

II. BACKGROUND

4 UA International is an international building trade union that represents approximately 355,000 plumbers, pipefitters, sprinkler fitters, service technicians, and welders across North America. UA International's operation is governed by the Constitution of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (the "Constitution").

5 UA 516 is a "trade union" for the purposes of the Code. It is a "Local Union" established by a charter granted by UA International under Section 79 of the Constitution and it represents members across the Province of British

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Columbia. UA 516 is governed by the Constitution, as well as its own set of bylaws called the United Association Local 516 Bylaws (the "Bylaws").

6 Prior to the events leading to the Application, the Applicant was a member of UA International and UA 516. The Applicant was also UA 516's Business Manager and Financial Secretary-Treasurer from 1993 until his retirement in 2013. The Applicant also owned and operated the Joint Apprentice Refrigeration School ("JARTS 2002"), which provided training to UA 516's members. JARTS 2002 received funding through employer contributions to provide the training.

7 UA 516 says that, in 2018, it reconstituted a joint training committee with an aim to, among other things, cease having employer contributions sent directly to JARTS 2002. It wrote to the Applicant requesting documents, including recent financial statements, from JARTS 2002 to "ensure that employer contributions were being used solely for the benefit of UA 516 members". UA 516 says the Applicant did not initially respond to this request. UA 516 says in the spring of 2019, JARTS 2002 vacated the building that it was using for training and, in the process, sold, gave away, or destroyed most of the equipment in the building. The Applicant gave some of the requested documents to UA 516, but it did not provide others, including the requested financial documents.

8 In June 2018, JARTS 2002 filed a Notice of Civil Claim in BC Supreme Court against UA 516 and several contractors claiming damages as a result of the decision to cease sending employer contributions directly to JARTS 2002. UA 516 responded by filing a Counterclaim alleging a breach of trust and breach of fiduciary duty. UA International is not a party to the litigation, which is ongoing.

9 Relevant to this application is the process for filing charges under the Constitution. The Constitution allows for charges to be laid against a UA member in two ways. The first is under Section 200 of the Constitution, where charges can be laid when a member breaks their obligations to UA International or any Local Union. The Executive Board of an affected Local Union has jurisdiction over these charges and is responsible for any trial. The second way charges can be laid is under Section 203 of the Constitution. Under that provision, charges can be laid against a member for any offence committed against UA International or its officers, including any violation of the Constitution. The UA International's General Executive Board has original jurisdiction to conduct a trial for Section 203 charges, although it can refer the charges to a Local Union to be acted on under Section 200.

10 In 2020, UA International Special Representative Larry Slaney laid charges with UA International under Section 203 of the Constitution alleging the Applicant violated Section 136 of the UA International and UA 516 Constitution, which deals with "Local Union Funds" and which provides for discipline, including suspension or expulsion, of UA 516 members who do not properly handle union funds or property. Slaney alleged the Applicant violated this Section by "both failing to disclose various documents requested by UA 516 and by misusing funds and property held in trust for UA 516 members". Slaney is not, and has never been, a member or officer of UA 516.

11 On September 4, 2020, UA International wrote to the Applicant advising it had approved the charges against him and had scheduled a trial for October 8, 2020, pursuant to Section 203 of the Constitution.

12 The trial was held by video conference on October 8, 2020. The trial was conducted by Gerry MacDonald, a Business Manager for UA Local 721 who acted as the hearing officer (the "Hearing Officer"). At the trial, the Applicant was represented by legal counsel. Three UA 516 members testified against the Applicant and were cross-examined by the Applicant's counsel. The Applicant then testified for himself, but Slaney did not cross-examine him. The Applicant called no additional witnesses. Both parties provided closing submissions, and MacDonald then asked each party whether they agreed they had received a fair hearing. Both parties agreed. UA 516 was not a party to the trial and did not make submissions or present evidence, though as noted Slaney called three UA 516 members as witnesses.

13 On February 18, 2021, the Hearing Officer issued a report to UA International finding the Applicant had breached Section 136 of the Constitution by failing and refusing to turn over records to UA 516, and by misusing and misappropriating UA 516 funds and property. The report was provided to the Applicant and recommended the

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Applicant be expelled from UA International and UA 516 membership and not permitted to re-join unless the Applicant satisfied certain conditions.

14 On April 26, 2021, UA International wrote to the Applicant notifying him that UA International had accepted the report's recommendations, was expelling the Applicant from UA International and UA 516 membership, and was not permitting him to re-join unless he satisfied certain conditions.

III. POSITIONS OF THE PARTIES

Applicant's Application

15 The Applicant argues UA International and UA 516 breached Section 10(1) of the Code by failing to provide him with a fair trial. The Applicant also alleges UA International and UA 516 discriminated against him, pursuant to Section 10(2) of the Code, by pursuing charges against him in retaliation for the ongoing litigation between JARTS 2000 and UA 516.

16 With respect to his allegations regarding the trial, the Applicant says the Hearing Officer breached natural justice by making findings based on Slaney's opening statement, and not the evidence presented by the parties. The Applicant points to findings made by the Hearing Officer, which he says are consistent with the opening statement, and not with "uncontested evidence" provided by the Applicant. He also complains that UA International "changed the focus" of the trial to only address allegations which took place between 2017 to 2019, rather than including earlier events.

17 In addition, the Applicant says the "evidence of the Union witnesses was significantly damaged in cross[examination]" and takes issue with findings of fact made by the Hearing Officer, which he says are inconsistent and patently unreasonable. He also says the Hearing Officer allowed Slaney the opportunity to make further submissions after closing arguments, though ultimately he chose not to do so. He says this is "indicative of bias and a denial of natural justice". Finally, he says it is "significant" that the Applicant "gave evidence that was inconsistent with all of the allegations against him, and his evidence was not challenged in any manner during the hearing". He notes, in relation to this, that Slaney did not cross-examine the Applicant.

UA 516's Response

18 In response, UA 516 says the Board has no jurisdiction to hear the Application "either in its entirety or at least against UA 516". UA 516 notes that UA International is an "international organization", and the Application "alleges a denial of natural justice in a dispute between an international organization and a member", which UA 516 says is within the jurisdiction of a court and not the Board to address. In the event the Board does take jurisdiction, UA 516 says the Application should be dismissed against UA 516 because "UA 516 played no role in the decision-making process that is the subject" of the Application.

19 In the alternative, UA 516 says UA International and UA 516 did not deny the Applicant natural justice and says the Applicant "is simply complaining about how the Hearing Officer weighed the evidence at trial, which is not a violation of Section 10" of the Code.

20 With respect to its argument that the Board does not have jurisdiction, UA 516 says the Application deals solely with an issue between the Applicant and UA International, stating that the Applicant "treats the [UA International] and UA 516 as interchangeable parts of one entity" when "[t]his is not the case".

21 Specifically, UA 516 notes the Hearing Officer who adjudicated the Applicant's trial was not "an officer or member of UA 516 and was not appointed by an officer or member of UA 516" and says the Board's jurisdiction under Section 10 of the Code is limited to ensuring "employees are granted natural justice in various dealings with their 'trade union'". UA 516 says the Code definition of "trade union" does not include international unions like UA International and says the "only exception to this rule" is in limited circumstances where an international union may be subject to Section 10(1)(a) of the Code where it shares a constitution with a local. UA 516 argues that circumstance does not apply to this case for two reasons: first, the charges were filed by an officer of UA

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International under Section 203 of the Constitution, which is not a shared provision of the Constitution and which applies only to UA International, not to UA 516; and, second, this case deals with a disciplinary issue covered by either Section 10(1)(b) or 10(1)(c) of the Code.

22 UA 516 also says, in the case the Board does find it has jurisdiction, that the Application "should be dismissed against UA 516". UA 516 says the "only role that any member or officer of UA 516 had at the trial was as a witness". UA 516 says it "simply had no role in the decision-making process ... and thus cannot possibly be found to have denied [the Applicant] natural justice in the making of that decision".

23 With respect to its alternative argument, that UA International and UA 516 did not deny the Applicant natural justice, UA 516 says the "only allegations" the Applicant raises are that the Hearing Officer "did not properly consider the evidence before him ... and demonstrated bias in making his decision".

24 UA 516 notes, with regard to the evidence, that the Hearing Officer was not required to strictly follow the rules of evidence but "must not be influenced by matters outside the scope of the evidence". UA 516 also notes that under Section 10 of the Code, the Board "is not concerned with the substantive decision made, only the process leading to the decision".

25 UA 516 then disputes the Applicant's allegation that the Hearing Officer relied on the opening statement as evidence, arguing the Hearing Officer was clear in not accepting the opening statement as fact. UA 516 says the remainder of the Applicant's allegations "amount to attempts to get the Board to reweigh the evidence presented at the trial".

26 With regard to whether there was bias, UA 516 says the Applicant suggests he was expelled from UA 516 membership in retaliation for the litigation between JARTS 2002 and UA 516. UA 516 says this is a "baseless allegation". UA 516 again reiterates that it did not pursue charges against the Applicant, and says the decision makers in the Applicant's case had nothing to do with the litigation involving JARTS 2002, which involves only UA 516.

UA International's Response

27 UA International also argues the Board does not have jurisdiction because it is not a "trade union" under the Code.

28 Alternatively, UA International says it did not deny the Applicant natural justice or discriminate against the Applicant, noting it is not a respondent to the Applicant's court action and is not involved in the litigation. UA International instead says the Applicant is simply attempting to "relitigate a proceeding which resulted in an outcome that [he] found unsatisfactory".

29 UA International cites the Board's case law to note the Board's jurisdiction under Section 10 of the Code is limited "to the procedural rather than an ability to delve into the resulting substantive outcomes" and says "the vast majority" of the Applicant's allegations deal with the substantive findings made with respect to the trial rather than UA International's "adherence to the principles of natural justice".

30 With respect to its natural justice argument, UA International notes the Applicant was represented by legal counsel at the trial and says the Applicant does not allege he was not aware of the charges against him or that UA International failed to give him reasonable notice of the charges. UA International also says that the Applicant does not dispute he was properly charged under the Constitution and says the trial was also "founded by, and conducted in accordance with, the Constitution's requirements".

31 UA International denies the Applicant's assertion that the scope of allegations against him was changed at the trial and says these allegations were consistent with the charging document and always focused on events from 2018 and 2019. UA International also says that "even if the charges were narrowed at some point", narrowing of charges would be beneficial to a person in the Applicant's position and not contrary to natural justice principles.

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32 In response to the Applicant's assertion that Slaney failed to cross-examine him, UA International says that Slaney's decision not to cross-examine the Applicant "was not unfair or prejudicial" and "does not now translate into a violation of the principles of natural justice". UA International says that Slaney clearly "believed he had presented enough evidence to prove the case" against the Applicant.

33 UA International says that while the Applicant "is suggesting to the Board that - solely because it went unchallenged ... via cross examination at hearing - his testimony was *required* to be accepted by [the Hearing Officer] as the uncontroverted and ultimate truth", this "is a flawed and unreasonable expectation" when considering that the trial was an internal union disciplinary proceeding (*italics in original*). UA International says the "Board has never imported, and ... should not now foist, absolute and legalistic rules and approaches related to evidence upon lay hearings such as [UA International's] internal disciplinary process".

34 In addition, UA International says the hearing was conducted in good faith, with no bias, and says the Hearing Officer gave both parties an opportunity to make additional submissions after closing arguments, which they did not take. UA International says this was indicative of the Hearing Officer's attempts to ensure a fair process.

35 Finally, UA International says there was no basis for the Applicant's allegation that the Hearing Officer made findings not based in the evidence and argues that in making this allegation, the Applicant is asking the Board to scrutinize the Hearing Officer's reasons in a manner outside the scope of Section 10 of the Code. UA International also says the Hearing Officer's reasons "support the conclusion that he [was not] relying on [Slaney's] opening as fact".

Applicant's Final Reply

36 The Applicant disputes UA 516's and UA International's arguments regarding the Board's jurisdiction and cites the Board's case law to argue it has jurisdiction against both UA 516 and UA International in this case. With respect to this argument, the Applicant says UA 516 agreed to a process involving UA International and says:

... [i]t would defeat the purposes of the Code to allow Unions to move their disciplinary and coercive powers to their International organization to avoid review by the BC Labour Board for procedural fairness, while the Local Union slavishly follows any decision made by this now unaccountable organization.

37 The Applicant also encloses a letter which he says shows "the Local was advised that the Applicant's membership in both the [UA International] and the Local had been terminated by [UA International]". The Applicant says this letter shows UA 516 "simply contracted out the process to expel a member to the International". The Applicant then says that in this scenario, where "an International Union imposes discipline and then directs the BC Local Union to implement that discipline[,] the objects of the Code are respected only if the Board has the authority to review that process for procedural fairness and natural justice". The Applicant lists various ways through which he says the Board could take jurisdiction.

38 In reply to the parties' arguments regarding procedural fairness, the Applicant takes issue with some factual allegations made by UA 516 and UA International, which he says contradict evidence presented at the hearing, including the Applicant's testimony. The Applicant makes this argument with reference to the trial transcript.

39 The Applicant then says that procedural fairness "is not a matter of weighing the evidence" but "involves limiting the decision to the evidence adduced at the hearing". He reiterates his allegation that the Hearing Officer used the opening statement as evidence.

40 In addition, he notes, with respect to Slaney's failure to cross-examine the Applicant, that where a decision is made not to cross-examine the only witness put forward by the opposing side it does have implications. The Applicant then cites case law regarding the rule in *Browne v. Dunn*, (1893), 6 R. 67 (H.L.) ("*Brown v. Dunne*").

41 Finally, the Applicant says, with respect to bias, that the hearing transcript shows it is "unfathomable" that the charges could be sustained. Given this, he says the "reference in the transcript that the hearing had been fair" was

made because "one had reason [at the hearing] to believe a positive outcome would be achieved". He also says, "in light of the evidentiary record[,] there was **no basis** upon which a board could make the adverse findings they did against [the Applicant]". (emphasis in original)

IV. ANALYSIS AND DECISION

42 Section 10 of the Code states:

- (1) Every person has a right to the application of the principles of natural justice in respect of all disputes relating to
 - (a) matters in the constitution of a trade union,
 - (b) the person's membership in a trade union, or
 - (c) discipline by a trade union.
- (2) A trade union must not expel, suspend or impose a penalty on a member or refuse membership in the trade union to a person, or impose any penalty or make any special levy on a person as a condition of admission to membership in the trade union or council of trade unions
 - (a) if in doing so the trade union acts in a discriminatory manner, or
 - (b) because that member or person has refused or failed to participate in activity prohibited by this Code.

43 Section 1(1) of the Code defines a "trade union" as follows:

"trade union" means a local or Provincial organization or association of employees, or a local or Provincial branch of a national or international organization or association of employees in British Columbia, that has as one of its purposes the regulation in British Columbia of relations between employers and employees through collective bargaining, and includes an association or council of trade unions, but not an organization or association of employees that is dominated or influenced by an employer.

44 In the present case, UA International and UA 516 argue, among other things, that the Board does not have jurisdiction over the application under Section 10 of the Code because UA International, as an international union, is not a "trade union" under the Code and it was UA International that conducted the trial. UA 516 also makes an argument regarding the Board's jurisdiction under Section 10(1)(a) of the Code, arguing the Board does not have jurisdiction because the charges were filed under a provision of the Constitution which applies only to international unions, and not local unions.

45 The Board considered the issue of whether national or international unions are subject to Section 10 of the Code in *Janine Brooker*, BCLRB No. B94/2017, finding that the Code definition of "trade union" excluded these unions and that these unions are not subject to Section 10(2) of the Code:

In *Corcoat Engineering*, BCLRB No. 115/74, [1974] 1 Can LRBR 530, the Board considered the definition of 'trade union', finding:

That definition on its face conspicuously excludes either international or national unions from its scope. A "trade-union" under the Code must be a local or provincial organization of employees or a local or provincial branch of a national or international organization of employees. It cannot be a national or international organization of employees standing by itself.

In [*Gerald Boe*, BCLRB No. 161/87 ("*Boe*")], the Board dealt with the question of whether it had jurisdiction under the Code to adjudicate the application before it alleging the local union, the International union and the General President violated what was then Section 5(2) (now Section 10(2)) of the Code. The Board considered the definition of trade union under the Code, finding: "It is clear that this definition excludes either national or international unions from its scope: see *Corcoat Engineering Ltd.*, BCLRB No. 115/74, [1974] 1 Can LRBR 530. Such organizations are therefore not subject to Section 5(2) of the Code." (*Boe*, supra, p. 4)

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(paras. 13-14)

46 In *United Brotherhood of Carpenters and Joiners of America, Local 1998*, BCLRB B437/99, the Board noted that it may have jurisdiction under Section 10(1)(a) of the Code over an international union's actions where a national and international union share the same constitution:

The inference I draw from the formulation of Section 10 is that its scope may extend to some actions of the International Union taken under the Constitution at least where the local union and the international union share the same constitution. As I interpret Section 10(1)(a), if the issue arises in the Constitution of the trade union, the entitlement to natural justice arises, regardless of whether the decision-maker may ultimately be an international body. ...

(para. 18)

47 Here, while the Applicant does appear to allege that UA International and UA 516 discriminated against him under Section 10(2) of the Code, his primary argument is that UA International and UA 516 breached Section 10(1) of the Code by denying him procedural fairness at the trial and by expelling him from membership in both UA International and UA 516. In this sense, the Application alleges a dispute, under Section 10(1)(b) of the Code, relating to the Applicant's membership in UA 516 as the Applicant argues that UA 516 acceded to UA International's decision following the trial and that this resulted in his expulsion from both unions. The parties do not deny that UA 516, as a local union, is a trade union under the Code. I also note that while charges were laid under Section 203 of the Constitution, which is a provision applying only to UA International, it charged the Applicant with breaching Section 136 of the Constitution, which deals with local union funds, and which also applies to UA 516. In these circumstances, and given the ultimate outcome of this decision, I find I can assume, without deciding, that the actions of both UA International and UA 516 are subject to Section 10 of the Code. I will now turn to the merits of the application.

48 As noted by the parties, the Board has held that its jurisdiction under Section 10 of the Code is limited: *Marilyn Coleman et al.*, BCLRB No. B282/95 ("*Coleman*"). The focus in Section 10(1) is not on the substantive decisions or actions taken by a union, but on the process leading to the union's decision: *United Brotherhood of Carpenters and Joiners of America, Local 1998* and *United Brotherhood of Carpenters and Joiners of America, Local No. 1237*, BCLRB No. B77/2000 ("*United Brotherhood*"). The essential nature of a dispute under Section 10(1) must give rise to a natural justice concern: *Terry Thompson*, BCLRB No. B444/2003.

49 In *Coleman*, the Board set out the general natural justice requirements created by Section 10 of the Code:

- * Individual members have the right to know the accusations or charges against them and to have particulars of those charges.
- * Individual members must be given reasonable notice of the charges prior to any hearing.
- * The charges must be specified in the constitution and there must be constitutional authority for the ability to discipline.
- * The entire trial procedure must be conducted in accordance with the requirements of the constitution; this does not involve a strict reading of the constitution but there must be substantial compliance with intent and purpose of the constitutional provisions.
- * There is a right to a hearing, the ability to call evidence and introduce documents, the right to cross-examine and to make submissions.
- * The trial procedures must be conducted in good faith and without actual bias; no person can be both witness and judge.
- * The union is not bound by the strict rules of evidence; however, any verdict reached must be based on the actual evidence adduced and not influenced by any matters outside the scope of the evidence.

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- * In regard to serious matters, such as a suspension, expulsion or removal from office, there is a right to counsel.

(para. 118)

50 The Board has also held that natural justice requirements under Section 10 of the Code are contextual: *Tarsam Basi*, 2020 BCLRB 44, para. 54. The requirements will vary depending upon the circumstances of the case and the seriousness of the issue: *Coleman*, para. 116. However, the parties do not dispute that the full set of requirements listed above, including access to a trial, apply in the present case. Given the seriousness of the charges against the Applicant, as well as the consequences for the Applicant, including expulsion from union membership, I agree that the full set of requirements do apply, though their application remains contextual to the specific facts of the case before me.

51 Applying these requirements to the circumstances of this case, I find both UA International and UA 516 have met their procedural fairness obligations. As UA International and UA 516 note, the Applicant does not make arguments with respect to many of the procedural fairness requirements set out in *Coleman*. He does not argue that the charges were not listed in the Constitution, that he was unaware of the charges against him, that UA International or UA 516 failed to give him reasonable notice, or that he did not have access to counsel. Rather, the Applicant's arguments primarily relate to the Hearing Officer's findings in relation to evidence presented at the trial. He argues the Hearing Officer made findings based on the opening statement and not the evidence. In relation to this, he says he should have had an opportunity to cross-examine Slaney. He also argues other findings were not based in evidence or were "patently unreasonable".

52 I find these arguments, at their essence, take issue with the substance of the Hearing Officer's decision and not the trial process. As noted in *United Brotherhood*, Section 10(1) of the Code is a process right and not an avenue for appealing the substance of union's decision-making. Upon review of the hearing transcript and the reasons for the Hearing Officer's decision, I am not persuaded by the Applicant's argument that the Hearing Officer made findings based on the opening statement. In his reasons, the Hearing Officer stated he found Slaney's "overview" or opening statement "helpful in understanding Brother Slaney's allegations and the evidence presented". For this reason, he says he "will repeat some of it in this section of [his] report" but is also careful to note that the findings of fact set out in his reasons "were either undisputed or established by the evidence, or both". I do not see any indication that these findings were simply copied from the opening statement, without consideration of the evidence presented at trial. For this reason, I do not agree that the Applicant should have had an opportunity to cross-examine Slaney.

53 To the extent the Applicant argues the trial findings were inconsistent with the evidence or unreasonable, either in relation to the Applicant's testimony or otherwise, I find the Applicant is asking the Board to assess the substance of the Hearing Officer's decision. As noted above, this is outside the scope of the Board's role under Section 10 of the Code. While the Applicant argues the Hearing Officer "made findings of facts wholly unsupported by any facts", I disagree. The Hearing Officer's reasons set out his findings with regard to evidence presented, and it is not the Board's role, under Section 10, to reweigh the evidence before the Hearing Officer to reach a different conclusion: *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local No. 170*, BCLRB No. B157/2005, para. 96.

54 I am also not persuaded by the Applicant's remaining arguments regarding the trial. The Applicant argues the trial was unfair because UA International narrowed the scope of allegations at issue; the Hearing Officer allowed Slaney to make further submissions after closing arguments, though he chose not to do so; and the Hearing Officer made findings contrary to the Applicant's testimony in circumstances where the Applicant was not cross-examined. The Applicant cites the rule from *Browne v. Dunn* in relation to this argument.

55 Firstly, I find that even if the scope of the allegations were narrowed, that did not breach the Applicant's right to procedural fairness because he does not deny he received notice of the allegations that were pursued and had the opportunity to respond to them.

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56 While the Applicant also says the Hearing Officer was not impartial and his actions in allowing further submissions were "indicative of bias", I find that the Hearing Officer, having conduct over the hearing, was not precluded from seeking or permitting further evidence provided the process for doing so allowed the Applicant to know the case against him and respond. As it turned out, no further submissions were received. I find this circumstance does not demonstrate a basis for a finding of bias or a denial of natural justice.

57 In addition, the Applicant argues his testimony was uncontested at the trial because Slaney chose not to cross-examine him and he says the Hearing Officer breached procedural fairness by making findings that contradicted his testimony in this context. He cites the *Browne v. Dunn* rule in relation to this argument.

58 As noted above, I am not persuaded by these arguments. The Applicant testified last in the trial, and had notice of the allegations against him, the opportunity to hear the testimony of the opposing witnesses and cross-examine these witnesses, and, because he testified last, the opportunity to respond to all of the evidence through his own testimony. This is sufficient to meet the requirements of procedural fairness with respect to Section 10 of the Code.

59 The Applicant says his testimony was uncontested because he was not cross-examined. However, it was open to the Hearing Officer to evaluate the credibility of the Applicant's testimony in relation to all the evidence presented at the trial, given the Applicant had sufficient opportunity to respond to this evidence. To reiterate, it is not the Board's role under Section 10 of the Code to reweigh this evidence or reassess the Applicant's credibility. The Applicant cites the *Browne v. Dunn* rule, which also relates to a party's opportunity to respond to allegations made by an adverse party. The Board provided a summary of this rule in *Neptune Food Service Inc.*, BCLRB No. B40/2009 at paragraph 67:

The rule in *Browne v. Dunn* is when there is a witness on the stand during a hearing and it is one party's intention to later in the hearing raise evidence that contradicts or impeaches the credibility of the witness, it must give the witness notice of the contrary evidence so that the witness has an opportunity to address it. It is not necessary to cross-examine minor details in the evidence. However, it is necessary to give the opposing witness an opportunity to give evidence on matters of substance that will be contradicted.

60 As I said above, the Applicant testified last and had notice of, and had an opportunity to respond to, the evidence. There was no need for Slaney to cross-examine the Applicant to give him notice of contrary evidence because he had finished presenting his evidence when the Applicant testified. The Applicant disputes this because the Hearing Officer ultimately made findings which contradicted his testimony and because he says these findings were inconsistent with the evidence at trial. Again, this argument takes issue with the substance of the Hearing Officer's findings on the evidence, and not the trial process.

61 Finally, the Applicant says UA International and UA 516 discriminated against him under Section 10(2) of the Code by expelling him from membership "in retaliation for the current lawsuit that exists between JARTS 2002 and the Union". Upon reviewing the particulars, I find the Applicant has not established a *prima facie* case with respect to this allegation.

62 In summary, UA International gave the Applicant a trial where he received notice of the charges against him, called evidence, provided testimony, cross-examined witnesses, and was represented by counsel. I am not persuaded by the Applicant's arguments that this process lacked procedural fairness. Rather, I find this process met the natural justice requirements imposed by Section 10 of the Code, and the Applicant's arguments take issue with the substance of the Hearing Officer's decision. Accordingly, I find the Applicant has not established that either UA International or UA 516 breached the requirements of either Section 10(1) or Section 10(2), if these provisions are applicable.

V. CONCLUSION

63 For the reasons given, the application is dismissed.

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