

IN THE MATTER OF AN ARBITRATION

BETWEEN:

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183

(the "Union" or "LIUNA")

and

ROBERT B. SOMERVILLE CO. LIMITED

(the "Employer")

Appearances for the Union:

John Evans, General Counsel, LIUNA Local 183
Aruna Vithiananthan, Associate Counsel, LIUNA Local 183
Mohamad El Sabawi, Grievor

Appearances for the Employer:

Carl W. Peterson, Filion Wakely Thorup Angeletti LLP
Diane Laranja, Filion Wakely Thorup Angeletti LLP
James Jennings, Filion Wakely Thorup Angeletti LLP
Gord Butson, Corporate Vice President

This matter proceeded by videoconference on November 18 and December 16, 2020.

CONSENT AWARD

1. This matter arose from the lay-off and/or the termination of the employment of Mohamad El Sabawi (the "Grievor") and treatment he had experienced working on the Employer's pipeline projects starting in the last months of 2018.
2. LIUNA grieved the issues by letter dated July 13, 2020 (the "Grievance"). The Grievance referred to the Employer's being bound to the Pipe Line Maintenance and Service Agreement for Canada and made numerous assertions, including the following:

It is the Union's position that the Employer has violated Article 3.02 and all other related provisions of the Collective Agreement by, among other things, laying off, dismissing, wrongfully terminating and/or making the decision to not provide employment to the Grievor without just or reasonable cause and based on discriminatory motivation or reasons. Accordingly, the Employer has thereby violated each and every other relevant article, schedule, appendix, letter of understanding, duty and agreement, express or implied, forming part of the Collective Agreement.

The Union further grieves that the Employer has breached its obligations under:

1. Sections 25(2)(h), 27(2)(c), 32.0.1, 32.0.6, and 32.0.7, among others, of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 (“*OHSA*”) for failing to take every precaution necessary to protect the Grievor from workplace harassment;
2. Sections 50, among others, of *OHSA*, as no employer shall dismiss or impose any penalty upon a worker because the worker has acted in compliance or sought enforcement of *OHSA* or the regulations; and
3. Sections 5, 8 and 10, among others, of the *Human Rights Code*, R.S.O. 1990, c. H. 19 (the “*Code*”) as every person has a right to claim and enforce his or her rights to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship or otherwise, under the *Code* without reprisal for so doing.

3. The matter proceeded on November 18 and December 16, 2020 without *viva voce* testimony, but with reference to several documents and a detailed statement of particulars provided by the Union on August 26, 2020. Those were accepted by the parties as furnishing the foundation for the resolutions referred to below. In light of the potential for — if not likelihood of — a wrenching and divisive proceeding over many hearing days, and in order to better appreciate their accomplishment and the significance of the agreed upon terms of settlement, it is useful and appropriate to set out the full statement of particulars accepted by the Employer as put forward by the Union and the Grievor:

PARTICULARS OF MISCONDUCT

**RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 183 (THE “UNION”) AND ROBERT B. SOMERVILLE CO.
LIMITED (“EMPLOYER”)**

RE: GRIEVANCE OF MOHAMAD EL SABAWI DATED JULY 13, 2020

The below-mentioned particulars do not, and cannot, encompass the consistent and aggressive racist comments the Grievor endured while he was working for the Employer.

1. The Grievor is a Muslim Palestinian who has lived in Canada since 1989.
2. The Grievor started working for the Employer on or about September 2018 as a labourer.
3. It is the Union's position that the Grievor was laid off, dismissed, and/or wrongfully terminated without just cause on May 26, 2020.
4. It is the Union's position that the Employer has breached its obligations under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.I ("OHSA") and the *Human Rights Code*, R.S.O. 1990, c. H. 19 (the "Code") due to egregious racial discrimination and workplace harassment. The Employer failed to investigate or address the Grievor's repeated claims of racial discrimination.
5. It is the Union's position that the Employer reprisal against the Grievor for raising complaints of racial discrimination under OHSA and the Code.
6. On the Grievor's Record of Employment, the Employer stated that the Grievor was laid off due to a shortage of work.

September – December 2018

7. When the Grievor started working for the Employer, he was placed on *Employee A's* crew.
8. *Third Party Employee A* would call the Grievor names such as "terrorist."
9. *Employee B* and *Employee C* would call the Grievor names such as "goat fucker" and make camel jokes.
10. *Employee C* saw the Grievor standing near a Somali employee and asked the Grievor if they were "organizing a camel race" or a "terrorist bomb attack."
11. *Employee C* would use the word "n****r" while making jokes or in conversation in front of the Grievor.

January 29, 2019

12. On the way to the second day of foreman training on January 29, 2019, the Grievor got into a major car accident.
13. As per company policy, the Grievor reported the accident to foreman *Employee A* in order to notify the Employer.

14. Less than two (2) weeks after the incident, the Grievor was laid off for missing four (4) days of work in two (2) weeks due to his back and shoulder injury.
15. *Employee A* did not report the Grievor's accident to management or otherwise.

May 2019 – August 2019

16. On or about the second week of May 2019, the Grievor was called in as a floater in Morrisburg.
17. The Grievor worked mainly on *Employee D's* crew and *Employee E's* crew.
 - i. *Employee D's Crew*
18. While the Grievor worked with *Employee D's* crew, only *Employee F* made racist jokes such as calling him a "terrorist."
 - ii. *Employee E's crew*
19. The Grievor found that *Employee E's* crew was the most difficult to work with due to the endless racist commentary. *Employee E* and the *Third Party Employee B* witnessed this behaviour but did not participate themselves.
20. *Employee G* would call and/or say to the Grievor:
 - N****r
 - Sand n****r
 - Terrorist
 - Paki
 - "I hate all of you n****rs, you get women pregnant and do not take care of them."
 - "You should be used to the heat, you are a camel."
21. *Employee H* would say to the Grievor:
 - "I saw you on the show *Border Patrol*."
 - "Don't they check terrorists before working on a pipeline?"
22. *Employee H* showed the Grievor a meme of an Arab doll with a string, which said something to the effect of, "no one knows what it says, but everyone is afraid of pulling the string."
23. Sometime in August or September 2019, the Grievor was on fire watch and he could not leave his position at the pipe. The Grievor placed his garbage in the back of the truck, as he could not leave to find a garbage

bag. *Employee G* walked up to the Grievor and threw the garbage in his face.

24. *Employee G* would state that he was “untouchable”, and it was known that he was good friends with *Management Team Member A*.
25. At one point, *Employee G* stated that he was going to get a Somerville shirt made with the word “untouchable” printed on it.
26. The Grievor understood *Employee G*’s “untouchable” comments to mean that even if the Grievor made a complaint, nothing would be done because of *Employee G*’s relationship with management.

September 2019

27. The Grievor was on *Employee I*’s crew as of September 2019. Everyone on the crew made racist jokes except for one employee.
28. *Employee J*, *Employee K* and *Employee L* called the Grievor a “terrorist” among other names.
29. The Grievor explained to *Employee I*’s crew that he had just come from a racist crew, but the crew said they were just joking.
30. One day *Employee K* introduced the Grievor as a “terrorist” in a meeting and most of the crew laughed. After that, *Employee I* would call the Grievor his “terrorist buddy.”
31. The Grievor endured consistent camel and terrorist jokes.
32. One day *Third Party Employee C* introduced the Grievor as a “terrorist” and made a joke about the Grievor “fucking a goat.”
33. When the Grievor was introduced as a “terrorist” he felt small and humiliated.
34. Whenever the Grievor was introduced as a “terrorist” the rest of the crew would pick up the same language and the racist commentary was validated.
35. The discriminatory comments also made the Grievor feel nervous as he worked in a safety-sensitive field and needed to trust his crew.
36. One day during a safety meeting in Pickering, one of the crew members saw a racoon in the garbage and warned the guys to “watch out for the ‘coon in the garbage bin.”
37. When *Third Party Employee D* walked up to the garbage, he said something to the effect of, “Oh, shit. There is a racoon in here. I thought it was going to be a black guy.” The term “coon” is an offensive term used to refer to a black person.

October – December 2019

38. On October 13, 2019, the Grievor emailed *Management Team Member A*.
39. *Management Team Member A* spoke to the Grievor the next day on the jobsite. *Management Team Member A* indicated that he “couldn’t believe” the language and said it should not be happening.
40. *Management Team Member A* did not conduct an investigation into the Grievor’s complaints.
41. *Management Team Member A* transferred the Grievor to *Employee M*’s crew.
42. The Wednesday after the Grievor was transferred to *Employee M*’s crew, the Somerville Safety Inspector conducted a session on harassment and discrimination.
43. One day the Grievor was working near a gas station and saw his sister, who wears a hijab. After she left, the crew and *Third Party Employee E* started making fun of his hijabi sister and were making comments about “how it would feel if a Muslim woman sucked them off.”
44. The Grievor became very angry and left the site. *Third Party Employee E* ran after the Grievor and apologized.
45. *Employee M* spoke to the crew and they apologized to the Grievor.
46. Shortly after, the crew left for Christmas break and the Grievor expected to return in January 2020.

January - April 2020

47. The Grievor was not recalled to work after the Christmas break.
48. The Grievor called, emailed and messaged *Management Team Member A* about employment and did not receive a response.

April 25 - 26, 2020

49. The Grievor emailed the President of Somerville on April 25, 2020.
50. The Grievor contacted Union Sector Coordinator Patrick Sheridan on April 25, 2020. Patrick Sheridan contacted the Employer regarding the Grievor’s concerns.
51. *Management Team Member A* called the Grievor on or about April 26, 2020. *Management Team Member A* claimed that he did not respond to

the Grievor's inquiries because he had many emails from labourers asking for work.

52. The Grievor asked *Management Team Member A* if he had not been called back to work because he made a complaint about racial discrimination. *Management Team Member A* denied that was the case.
53. *Management Team Member A* said that the moment he heard of the racist behaviour in October 2019, that he transferred the Grievor to *Employee M's* crew.
54. *Management Team Member A* informed the Grievor that *Employee M* no longer had his own crew. *Management Team Member A* said he did not want to bring the Grievor back if he could not be on *Employee M's* crew as he was uncomfortable on other crews.
55. The Grievor asked why he was being held out of work solely because *Employee M* did not have his own crew. The Grievor asked to be put to work on another crew.
56. The Grievor told *Management Team Member A* that he could not be blamed if he was placed on a crew and needed to make a discrimination complaint. *Management Team Member A* said, "We can't have that."
57. The Grievor questioned why *Management Team Member A* would rather have racist employees than a discrimination complaint.
58. The Grievor asked why he was penalized for being the target of racist comments, but the people who made the comments were hired back.
59. *Management Team Member A* told the Grievor to calm down and he would see what they could do.
60. The Grievor stated that he was willing to work anywhere in Canada.

May 11 - 25, 2020

61. About three weeks after the Grievor's phone call with *Management Team Member A*, he was brought in for an eleven (11) day project on the Don Valley Parkway. The Grievor was placed on *Employee N's* crew.
62. During the eleven (11) day project, he heard two racist comments.
63. First, the Grievor informed a welder of the foreman's instruction to go on lunch. The welder glared at the Grievor, so the Grievor said, "Don't shoot the messenger." The welder responded, "At least you are not black." The Grievor said, "Excuse me?" The welder replied, "At least you are not a n****r."

64. Second, *Third Party Employee F* told the Grievor to, “get back on your magic carpet and go back to where you came from.” The Grievor said, “I didn’t hear that.” *Third Party Employee F* apologized.
65. After the eleven (11) day project was complete, the Employer notified the Grievor that he was laid off due to shortage of work.
66. The Grievor has yet to be recalled and/or assigned to other work.

The Union’s Position

67. It is the Union’s position that there is widespread and systemic racism in the Employer’s workforce.
68. It is the Union’s position that the Employer knew and was explicitly informed in writing of racial discrimination and harassment and did not adequately address or investigate the egregious conduct.
69. It is the Union’s position that the Grievor was reprimed against, laid off, dismissed and/or terminated because he raised discrimination and harassment complaints.
70. It is the Union’s position that the Employer failed to take every precaution necessary to protect the Grievor from workplace harassment and discrimination.

Disposition

4. Having demonstrated their commendable commitment to addressing and resolving both the immediate discrimination encountered by the Grievor and underlying issues that have afflicted many workplaces including theirs, on December 16th the parties reached an agreement in principle confirmed with their executing minutes of settlement on December 23, 2020.

5. As one would anticipate from its statement of particulars, the Union’s prosecution of the grievance on behalf of the Grievor underscored his substantial claims tied to human rights and occupational health and safety issues evident in the accepted history. In that context, I was requested to interpret and apply the *Human Rights Code* (the “Code”) and the *Occupational Health and Safety Act* (the “OHS”) pursuant to my authority under section 48 of the *Labour Relations Act, 1995* (the “Act”) so as to dispose of the issues under the *Code* and the *OHS* together with the other issues raised by the Grievance.

6. Pursuant to the tri-partite agreement of the Union, the Grievor and the Employer and having regard for the accepted facts and the jurisprudence, I declare and order the following:

- i. The Employer is bound to the Pipeline Maintenance and Service Agreement for Canada between various unions and the Pipe Line

Contractors Association of Canada, effective from January 1, 2018 to December 31, 2020 (the “Collective Agreement”).

- ii. The Employer violated the Collective Agreement, the *Code*, and the *OHSA* by laying off, dismissing, wrongfully terminating and/or making the decision to not provide employment to the Grievor without just or reasonable cause and based on discriminatory motivation or reasons.
- iii. The Employer is ordered to cease and desist from continuing to violate the Collective Agreement, and/or the *Code*, and/or the *OHSA*.
- iv. The Employer shall reinstate the Grievor to his employment with the Employer, without loss of compensation, back to June 2, 2020.
- v. The Employer is ordered to pay the Grievor damages in the amount of \$60,000.00 on account of human rights damages under the *Code*.
- vi. The Employer is ordered to make all necessary arrangement to have its employees who are represented by Local 183 engage in appropriate training regarding workplace harassment and discrimination, and in particular discrimination on the basis of race, at the Employer’s expense and in the presence of a Union Business Representative. Moreover, the Employer is also ordered to have its management staff engage in appropriate training regarding workplace harassment and discrimination, and in particular discrimination on the basis of race, at the Employer’s expense.
- vii. The Employer is ordered to conduct a comprehensive review and update its policies and procedures to ensure they comply with all recommended guidelines proposed by the Human Rights Commission and/or the Human Rights Tribunal.
- viii. The Employer is ordered to review and monitor its workforce and staff to ensure compliance with all *Code* requirements and guidelines.
- ix. The Employer is ordered not to reprise against the Grievor, or threaten to reprise against the Grievor, including in any future decision relating to, among other things, a lay-off and/or any recall from lay-off, for raising the concerns in the Grievance and for the enforcement of his rights under the *Act*, the *Code*, and/or the *OHSA*.

7. In accordance with the agreement of the parties, I remain seized in the event there is any dispute or issue arising out of this Consent Award, including but not limited to the interpretation, application, or enforcement of the overall resolution of the Grievance. In the event that any party is alleged to have violated this Consent Award in any way whatsoever, either the Union or the Employer may request a hearing before me

on an expedited basis to determine any issue relating to the interpretation, application, administration, or enforcement of the terms and conditions set out herein.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Derek L. Rogers
January 4, 2021

