

*Case Name:*

**Sinclair v. Lake St. Martin First Nation**

**IN THE MATTER OF a Complaint of Alleged Unjust  
Dismissal - Adjudication under Division XIV - Part III  
of the Canada Labour Code**

**Between**

**Miles Sinclair, employee, and  
Lake St. Martin First Nation (Gypsumville, Manitoba),  
employer**

**HRDC File No. YM2707-6346**

[2006] C.L.A.D. No. 211

**Canada  
Labour Arbitration**

**B.P. Schwartz, Adjudicator**

Supplementary decision: May 12, 2006.

(4 paras.)

[Editor's note: An original decision was released May 4, 2005. See [2005] C.L.A.D. No. 230.]

**Appearances:**

Neil H. Kravetsky, counsel for the employee.

No representation for the employer.

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**SUPPLEMENTAL AWARD**

**1** Counsel for the Employee has brought to my attention the fact that the Employer has not complied with my earlier Award in this matter dated May 4th, 2005. Counsel for the Employee seeks to have me issue a Supplementary Award to cover lost wages since the Award was issued. The Employer received notice regarding the request by counsel for the Employee to reopen the matter and have a Supplemental Award issued. The Employer has not responded to any correspondence forwarded by either myself or counsel for the Employee on this matter. I have throughout

ensured that the Employer was provided with copies of all correspondence and documentation connected with this application.

**2** The last paragraph in my original Award stated "I retain jurisdiction for the purposes of clarifying or elaborating any part of this award". My intent in this regard was to give the parties a chance to have me resolve any uncertainties I had left in my reasoning or order, not to supervise implementation. Once neither party applied to me within a reasonable time to do so, I believed that my Award was absolutely final and there could be no question but that I was functus. Perhaps I should have put an express time limit on such application for clarification or elaboration, say fifteen days from the date of the Award. However, if there is any doubt at all about the matter, let me make it clear that the Award was final, and my jurisdiction ended, as soon as a reasonable time to seek clarification or elaboration lapsed and I would consider anything over a month as clearly beyond the realm of a "reasonable time". I understand that many months after my award was issued, Counsel for the Employee had it registered in Federal Court.

**3** While no case law was brought to my attention, one of the recent and persuasive Awards I came cross in my own research has been *Paley v. Fishing Lake First Nation #89* [2005] C.L.A.D. No. 255:

"As a statutory appointee, my authority resides with the enabling legislation and I have no authority to venture outside of those statutory bounds. I have done all that I have been permitted under S. 242(1),(2),(3) and (4). Under these circumstances, I have exhausted my authority under the Code and I do not have jurisdiction to grant further Orders so as to ensure compliance to my original Order. I am now functus officio."

"S.244(1) and (2) allows the Complainant to file my Order with the Federal Court and she has already done so. Should I grant an application by the Complainant to reopen the hearing, I risk varying an order of the Federal Court and I do not have the authority to do so. The Code does not allow an adjudicator to issue any direction so as to ensure compliance with his order. The fact that the Complainant has already filed a copy of my Order issued on November 26, 2004, removed the matter from my jurisdiction. She is not entitled to return and ask me to correct or elaborate on my decision."

**4** My Award did identify the manifest and serious injustice done to the Employee in this case, and it is regrettable that the Employer does not appear to have complied with my remedial order. In my respectful opinion, however, I do not have the authority at this stage to grant the Employee's request for further relief.

qp/e/qlcl