

*Case Name:*

**Bartlett v. Arrowhead Development Corp.**

**IN THE MATTER OF Complaint of Alleged  
Unjust Dismissal - Adjudication under  
Division XIV - Part III of the Canada Labour Code  
Between  
Donna Bartlett, Employee, and  
Arrowhead Development Corporation, Portage la Prairie, Manitoba, Employer**

[2009] C.L.A.D. No. 324

Human Resources and Social Development Canada File No. YM2707-8014

Canada  
Labour Arbitration

**Panel: Bryan P. Schwartz (Adjudicator)**

Heard: Tuesday, September 15, 2009.

Award: October 21, 2009.

(17 paras.)

*Labour Arbitration -- Process and procedure -- Arbitration -- Order of proceedings.*

*Labour Arbitration -- Process and procedure -- Arbitration -- Jurisdiction.*

*Labour Arbitration -- Process and procedure -- Parties -- Absence.*

*Labour Arbitration -- Discipline and discharge -- Available sanctions -- Dismissal.*

The grievor alleged unjust dismissal by both Arrowhead Development Corporation (ADC) and Long Plain First Nation (LPFN). The inspector had found that ADC was not under federal jurisdiction, but did not address LPFN. There had then been further correspondence and documentary evidence including records of employment regarding whether the grievor had been employed by both ADC and LPFN. There had been some letters from the inspector and other federal officials not sent to LPFN. The grievor argued that ADC and LPFN had been common

employers and also that there was estoppel from raising, late in the proceedings, that a different member of a corporate family had been the actual employer. The record did not disclose the reason the inspector had not included LPFN.

HELD: Grievance allowed in part. An order providing for a hearing with ADC and LPFN entitled to make jurisdictional and procedural arguments and the merits of the case was issued. Remitting the matter to the inspector would not be consistent with the summary procedure in Part III of the Canada Labour Code.

**Statutes, Regulations and Rules Cited:**

Canada Labour Code, Division XIV, Part III, Part III

**Appearances:**

Counsel for the Employee: Jeffrey J. Palamar.

Counsel for the Employee: Darcie C. Yale.

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**PRELIMINARY AWARD**

**1** Ms. Donna Bartlett ("Ms. Bartlett"), the Employee, filed a formal complaint of unjust dismissal with Human Resources and Skills Development Canada on a Complaint Registration form stamped - apparently by a federal official - on July 8, 2008. The name of Ms. Bartlett's employer is listed, apparently in her hand printing, as both "AD Corporation" ("ADC") [which stands for Arrowhead Development Corporation] and "Long Plain First Nation" ("Long Plain").

**2** By letter dated August 28, 2008, Emina Omerkadic, the Inspector appointed by the federal government wrote to Ms. Bartlett and stated that ADC did not fall within federal jurisdiction. The letter does not address the issue of whether Ms. Bartlett was employed by Long Plain as well as ADC.

**3** By letter dated September 25, 2008, Mr. Jeffrey J. Palamar, counsel for Ms. Bartlett wrote to the Inspector. He submitted that:

- \* Ms. Bartlett had received three ROE's (Records of Employment). The first two identify her employer as Long Plain and then as Long Plain Employment and Training. The third identified her employer as Arrowhead Development Corporation;

- \* A corporate search revealed that Long Plain is the sole shareholder of ADC and a letter from ADC states that its head office is the Long Plain First Nation and that its website is [www.arrowhead-longplain.co](http://www.arrowhead-longplain.co);
- \* Ms. Bartlett had engaged in one continuous period of employment, with Long Plain and ADC acting as common employers, and that this period exceeded the necessary twelve months necessary to trigger the application of the unjust dismissal provisions of Part III of the *Canada Labour Code*;
- \* It was not appropriate for the Inspector to determine whether the complaint was within federal jurisdiction; that should be left to the adjudicator if the employer wished to pursue the matter.

**4** By letter dated October 14, 2008, the Inspector wrote to ADC. The letter invited ADC to respond to the complaint by Ms. Bartlett. There is no explanation within the letter for not also forwarding the letter to Long Plain First Nation. The letter from the Inspector attached the original complaint by Ms. Bartlett, which, as noted above, listed Long Plain as the employer as well as ADC.

**5** ADC wrote back to the Inspector. In the undated letter, ADC attached three pieces of correspondence on ADC letterhead. One of the letters, dated May 2, 2008, states that Ms. Bartlett's "contract with the [ADC] lapsed April 22, 2008" and that ADC has decided "not to renew it".

**6** By a handwritten letter dated February 3, 2009, Ms. Bartlett wrote to The Honourable Minister of Labour requesting the Minister of Labour to appoint an adjudicator in respect of her complaint under the *Canada Labour Code* against both ADC and Long Plain.

**7** By letter dated April 15, 2009, the Mr. Guy Baron, Director General, Federal Mediation and Conciliation Service, wrote to counsel for ADC and Ms. Bartlett with a copy to Ms. Bartlett and to ADC - but not to Long Plain - stating that I had been appointed as the Adjudicator to hear the unjust dismissal complaint.

**8** Counsel for ADC and Ms. Bartlett attended a preliminary hearing with me on September 15, 2009.

**9** Counsel for Ms. Bartlett laid out its position that:

- \* Long Plain and ADC are a "common employer" of Ms. Bartlett;

- \* Accordingly, Long Plain had employed Ms. Bartlett for more than the minimum period necessary for the unjust dismissal provisions of the *Canada Labour Code* to apply. The fact that she was "transferred" from Long Plain to ADC in the last stage of her employment did not interrupt the running of the necessary 12 months;
- \* ADC is estopped from arguing that Long Plain ceased to be the employer once Ms. Bartlett started working for ADC;
- \* There is authority for such an estoppel ruling in *Kelowna Flightcraft Air Charter Ltd. v. Withers*, 2006 FC 80;
- \* Kelowna also shows that an adjudicator under Part III of the *Canada Labour Code* also has the authority to add a party to the proceedings in the interests of equity.

**10** In *Kelowna*, the adjudicator found - and the Federal Court decision by Justice Kelen would confirm - that a respondent could not escape jurisdiction by arguing, late in the proceedings against it, that a different member of its corporate family was the actual employer. Rather, on the facts, the respondent had many opportunities to make its purely "technical" objection and had failed to do so, so was estopped from raising the complaint late in the proceedings. An adjudicator has equitable jurisdiction to add a party to overcome such a technical argument.

**11** Counsel for ADC argued that *Kelowna* is distinguishable on the facts, and that it is not clear from the documents jointly filed by the parties that ADC had waived its objections based on the allegedly distinct and separate identity of ADC and Long Plain.

**12** Neither party provided evidence on any point apart from the documentary record.

**13** The record does not expressly disclose the Inspector's reasoning in not naming Long Plain as a respondent in this adjudication. Counsel for Ms. Bartlett submitted that the Inspector had no authority to make disputable legal and factual conclusions about whether Long Plain should be a respondent as well as ADC. I agree. Ms. Bartlett asked for both parties to be named as respondents in the adjudication. Counsel for Ms. Bartlett had provided the Inspector with an arguable legal case for doing so. The Inspector was therefore duty bound to include Long Plain in these proceedings; see *Lemieux v Canada (Labour Affairs Officer, Human Resources Development)*, [1998] 4 F.C. 65. In my view, the equitable jurisdiction recognized in *Kelowna* permits me, on the facts of this case and weighing all the procedural equities, to add Long Plain as a respondent, and I will so order.

**14** I did consider the option of somehow remitting this matter back to the Inspector, and seeing if

the Inspector wished to now add Long Plains as a party. This course of action would not, in my view, be consistent with a fundamental objective of the unjust dismissal regime in the *Canada Labour Code*, Part III: to provide not only for the adjudication of disputes, but to ensure that adjudication is a summary procedure, rather than one that is complicated, protracted and unduly expensive for the parties.

**15** Counsel for Ms. Bartlett argued that I should go further and rule that both ADC and Long Plain are estopped from attempting to defeat the claim by alleging that the two entities are separate and distinct as opposed to constituting a common employer. I will refrain from drawing any definitive inferences of my own at this point in the proceedings, given the fact that the evidence at this stage is strictly documentary and Long Plain has had no opportunity to address the issue. The parties may, if they wish, introduce additional argument and evidence about estoppel issue, and its implication on my jurisdiction.

**16** My view is that the most expeditious and efficient way to resolve all matters will be to hold a single one day hearing to address and resolve the dispute as a whole, rather than my initiating a series of additional and separate steps before the merits are heard.

**17** Accordingly, I order the following:

- \* That there be a one day hearing held at which Ms. Bartlett and ADC can participate, and present any further evidence and argument they wish on procedural matters;
  
- \* A copy of this Preliminary Award will be sent to Long Plain;
  
- \* That the parties and Long Plain will have their opportunity to present their evidence on procedural and jurisdictional matters as well as the merits of the case of whether any dismissal was unjust. Long Plain may, if it wishes, argue that my decision at this stage to add it as a party is mistaken and that it should be viewed as an interlocutory decision that I can and should reverse;
  
- \* That this order is without prejudice to the authority of either Ms. Bartlett or ADC to call as witnesses officials from Long Plain even if Long Plain decides not to participate.

DATED at the City of Winnipeg, in Manitoba, this 21st day of October, 2009.

BRYAN P. SCHWARTZ - Adjudicator

cp/s/qlspi/qlaxw

---- End of Request ----

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Time Of Request: Wednesday, August 17, 2011 14:05:14