ONTARIO LABOUR RELATIONS BOARD

0832-10-G International Union of Operating Engineers, Local 793, Applicant v. **Avery Construction Limited**, Responding Party v. Operating Engineers Employers Bargaining Agency, Intervenor.

1089-10-G Labourers' International Union of North America, Local 1036 and Labourers' International Union of North America, Ontario Provincial District Council, Applicants v. **Avery Construction Limited**, Responding Party v. the Provincial Employer Bargaining Agency - Labourers, Intervenor.

BEFORE: Ian Anderson, Vice-Chair.

APPEARANCES: S. Wahl, Michael Hancock and Ken Lew appearing for International Union of Operating Engineers, Local 793; L.A. Richmond and W. Scott appearing for Labourers' International Union of North America, Local 1036 and Labourers' International Union of North America, Ontario Provincial District Council; Walter Thornton, Jim McKeown and Jeff Avery appearing for Avery Construction Limited; Walter Thornton, Joe Keyes and Brian Foote appearing for Provincial Employer Bargaining Agency - Labourers; Walter Thornton and Rich Thomas appearing for Operating Engineers Employer Bargaining Agency.

DECISION OF THE BOARD: November 27, 2012

1. These are referrals of grievances to the Board for determination under section 133 of the *Labour Relations Act, 1995* S.O. 1995 c.1 as amended ("the Act"). This decision determines several preliminary issues.

Background

2. These grievances relate to work performed by Avery Construction Limited ("Avery") in connection with the Sault Ste. Marie Municipal Landfill Gas Management System Construction Installation (the "Project").

3. At all material times Avery and International Union of Operating Engineers, Local 793 ("OE") were bound by the Provincial Agreement between the Operating Engineers Employer Bargaining Agency ("OE EBA") and the Operating Engineers Employee Bargaining Agency with respect to work performed in the industrial, commercial and institutional ("ICI") sector ("OE ICI Agreement"). Avery and OE were also bound to a Civil Agreement which pertained to road building/sewer watermain construction (the "OE Civil Agreement"). Avery employed members of the OE on the Project. It paid them pursuant to the OE Civil Agreement. On June 2, 2010, OE referred a grievance to the Board which alleged that its members should have been paid pursuant

to the OE ICI Agreement: Board File No. 0832-10-G. On June 10, 2010 Avery filed a Request for Hearing and Notice of Intent to Defend/Participate in which it took the position that the work was properly performed pursuant to the OE Civil Agreement.

4. At all material times Avery and Labourers' International Union of North America, Local 1036 and/or Labourers' International Union of North America, Ontario Provincial District Council (collectively "LIUNA") were bound to ICI Provincial Collective Agreement ("LIUNA ICI Agreement"), a LIUNA "Power Sector Agreement" and a local Civil Agreement ("LIUNA Civil Agreement"). Avery employed members of LIUNA on the Project. It paid them pursuant to the LIUNA Civil Agreement. On June 22, 2010, LIUNA referred a grievance to the Board in which it alleged that its members should have been paid pursuant to the LIUNA ICI Agreement or alternatively the Power Sector Agreement: Board File No. 1089-10-G. On June 23, 2012, Avery filed a Request for Hearing and Notice of Intent to Defend/Participate in which it took the position that the work was properly performed pursuant to the LIUNA Civil Agreement.

5. Both grievances were scheduled to be heard on July 6, 2010. On July 2, 2010 Avery wrote to the Board with respect to the Labourers grievance and advised that those parties had agreed that the matter should be adjourned *sine die* pending the outcome of a sector dispute which Avery undertook to file. On July 2, 2010 Avery filed a Response to the OE grievance in which it simply repeated its denial to the OE's assertion that the work should have been paid for pursuant to the OE ICI Agreement and requested that the OE grievance and the LIUNA grievance both be adjourned *sine die* pending determination of a sector dispute application which it undertook to file. It noted the agreement of LIUNA and stated that it understood that the OE would consent, but that this was in the process of being confirmed. By letter dated July 5, 2010, Avery advised the Board that the OE had agreed that the matters should be adjourned *sine die* pending the resolution of the sector dispute, subject to Avery's undertaking to file an application concerning the sector dispute on or before July 9, 2010. No hearing took place on July 6, 2010.

6. By decision dated July 21, 2010, the Board adjourned the Labourers grievance *sine die*.

7. Avery did not file its application concerning the sector dispute by July 9, 2010. This prompted a letter dated July 22, 2010 from the OE requesting that its grievance be relisted for hearing. On July 23, 2010, however, Avery filed its sector determination application under section 166: (Board File No. 1458-10-M). By decision dated July 25, 2010, on the request of Avery, the Board adjourned the OE grievance pending the determination of the sector dispute. In granting the adjournment, the Board noted that it was not clear whether OE consented, but stated that it made "eminent sense" to grant the adjournment as requested by Avery.

8. By decision dated January 30, 2012 in Board File No. 1458-10-M, the Board (consisting of Vice Chair Slaughter) determined that the work in dispute fell within the ICI sector of the construction industry.

9. The grievances were then re-listed for a hearing on July 16, 2012.

10. On July 12, 2012 counsel, who had previously been acting on behalf of only Avery, filed three sets of documents: a combined Response to both grievances on behalf of Avery; a Notice of Intent to Participate and a Response on behalf of the OE EBA with respect to the OE grievance; a Notice of Intent to Participate and a Response on behalf of the Provincial Employer Bargaining Agency - Labourers ("Labourers EBA") with respect to the LIUNA grievance. In the combined response, Avery submitted that the Board should adopt an approach to damages similar to the one which it applies in jurisdictional disputes. Avery took the position that its decision that work on the Project was subject to the Civil Agreements, while wrong in light of the Board's determination in the sector dispute, was reasonable and accordingly no damages should be awarded in the grievances. The responses filed on behalf of the two EBAs simply adopted the combined response filed by Avery.

11. The OE and LIUNA raise three preliminary issues. First, they argue that it is too late for the EBAs to intervene, and that in any event they have nothing to add. Second, they argue that it is too late for Avery to raise the reasonableness of its initial sector determination as a defence to its liability for damages. Third, they argue that the reasonableness of Avery's sector determination is not relevant to the question of Avery's liability for damages. The OE argues that the determination of this issue should be remitted to Vice Chair Slaughter. Both the OE and LIUNA argue that in the event that the Board determines that the reasonableness of Avery's choice of sectors is relevant, then these grievances should be remitted to Vice Chair Slaughter as, the OE and LIUNA assert, Avery led evidence as to the reasonableness of its choice of sectors in the proceedings which took place before Vice Chair Slaughter.

12. I ruled orally as follows:

> I will hear argument with respect to the first three issues: the propriety of the intervention by the EBAs at this time; the propriety of Avery raising the "reasonableness" issue at this time; and whether on Avery's best case, reasonableness is a factor in this case. If reasonableness is a factor, and the parties are unable to resolve these grievances, I will address whether I, as opposed to Mr. Slaughter, should hear evidence in relation to that issue at a later time.

Intervention of the Employer Bargaining Agencies

13. The OE notes that although the OE EBA received a copy of the referral, it did not file a timely Notice of Intent to Participate. The OE notes that the Board has repeatedly recognized that the filing of a Notice of Intent is not an onerous or time consuming process. The OE EBA therefore stood the risk of being found in default pursuant to the Board's Rules of Procedure. The failure of the OE EBA to file a Notice of Intent also means, the OE argues, that "the cast of characters was set". The OE cites *1578948 Ontario Inc. o/a Niagara Coatings & Insulation*, 2005 CanLII 40324 (ON LRB); *Traugott Building Contractors Inc.*, 2010 CanLII 8386 (ON LRB); and *Dominion Metal & Roofing Works*, 2005 CanLII 1639 (ON LRB). In any event, the OE argues

that since the OE EBA has simply adopted the submissions of Avery, the OE EBA has nothing to add.

14. The Labourers argue that the LIUNA EBA should not be permitted to intervene at this point and adopt the submissions of the OE on this issue.

15. I am not persuaded by these arguments. First, it is not a question of whether the EBAs have anything to add. They are parties as of right: see section 163(3). The question is whether they should be permitted to intervene notwithstanding the late filing of Notices of Intent to Defend/Participate. Second, with respect to whether the EBAs should be permitted to intervene, there is no prejudice to the OE or to the Labourers by allowing the intervention at this time: the EBAs are represented by the same counsel as Avery and adopt all of the positions of Avery.

16. The cases cited by the OE do not change this conclusion. *Niagara Coatings* is one of many cases in which the Board has reviewed the Rules and statutory provisions which permit it to find a responding party in default if it fails to file a Notice of Intent to Defend. In this case, there is no prospect of a default finding as the responding party, Avery, had itself filed timely Notices of Intent to Defend. In *Traugott Building Contractors* certain affected parties sought to intervene. Permitting the late interventions would have resulted in the introduction of new issues and precluded the case from otherwise proceeding on the basis of agreed facts (see para. 9). The case, therefore, is distinguishable on the facts from this case. *Dominion Sheet Metal & Roofing Works* must be understood within the context of the then ongoing litigation between Local 183 and LIUNA. Notwithstanding the fact that LIUNA stated it would be bound by challenges and representations made by Local 183, LIUNA was represented by different counsel. Permitting the intervention of LIUNA raised the prospect of dragging the case into broader ongoing litigation then going on between Local 183 and LIUNA.

17. Accordingly, I exercise the Board's discretion to permit the intervention of the OE EBA and the Labourers EBA in these proceedings.

Timeliness of the Defence of Reasonableness of Avery's Initial Choice of Sectors as a Defence to Liability for Damages

18. The OE notes that with respect to the OE grievance, Avery's response was due on July 2, 2010 since the hearing was originally scheduled for July 6, 2010. Avery's response filed in July 2, 2010 did not raise the defence of reasonableness. The OE argues that there has been no change in the material facts and no change in relevant case law or policy since 2010. It is improper, the OE suggests, for Avery to file a revised response on July 12, 2012, shortly before the hearing which had been rescheduled for July 16, 2012. The OE cites the following cases in support of its argument: *Bruce Power LP*, [2011] OLRD No. 3584; *Sirch Holdings Inc. (c.o.b. The Ridout Tavern Complex),* [1997] OLRD No. 4078; *1390386 Ontario Ltd. (c.o.b. Ingersoll Knechtel Foodland),* 2003 OLRD No. 2671; *Walls.Com Inc.,* [2007] OLRD No. 5005; and *1440842 Ontario Inc. (c.o.b. KYIV Architectural Metals),* [2001] OLRD No. 4227.

19. I do not agree that there was anything improper about Avery filing a revised response in this case for the following reasons. First, the hearing did not commence on July 6, 2010 as originally scheduled. Rather, it commenced on July 16, 2012. Avery's revised response was, therefore, filed in a timely manner in relation to the hearing which actually took place. Second, it is clear that the original response filed by Avery was *pro forma*: it is very brief and was obviously filed only in order to ensure compliance with the Board's Rules of Procedure. As stated in that response, Avery's view was that the sector dispute should be addressed first. As stated in the Board's decision dated July 25, 2010 in the OE grievance, this made eminent sense. Third, the issue which Avery now seeks to raise relates to the quantification of damages. The quantification of damages is typically bifurcated from the question of liability. The Board's determination of the sector dispute has effectively determined the merits of these grievances. I see no impropriety in Avery raising issues with respect to the quantification of damages now that it is clear that it breached the collective agreements.

20. The OE relies upon *Bruce Power LP* for the proposition that the Board will not relieve a party of the requirement to plead all material facts in compliance with the Board's Rules of Procedure. In my view the case is entirely distinguishable. In that case it was the applicant which raised a factual issue for the first time in its opening statement, some six months after referring a grievance to the Board for determination. As noted by the Board in that case, having elected to make use of the Board's procedures, the applicant was expected to comply with the Board's Rules. Those Rules required the applicant to state all material facts upon which it sought to rely in the referral of the grievance to the Board. The applicant's late attempt to raise an entirely new factual issue constituted not only a breach of the Board's Rules of Procedure but would have prejudiced the responding parties, that had filed responses on the basis of the material facts pled in the referral, and would have required an adjournment causing a waste of the Board's resources. In this case, by contrast, Avery and the EBAs raised the defence of reasonableness in the responses which they filed. Those responses were filed prior to the commencement of the hearing as required by the Board's Rules. The issue, therefore, was raised in a timely way.

21. *KYIV Architectural Metals* is a case in which a responding party to a referral of a grievance sought to lead evidence notwithstanding its failure to file a response. The Board refused to permit the responding party to do so. In this case, by contrast, Avery and the EBAs have filed timely responses.

22. In each of *Sirch Holdings, Walls.Com Inc.* and *Ingersoll Knechtel Foodland* the responding union to a termination application sought to raise new allegations in the termination application after the time provided for making representations provided for in the Board's Rules. In each of these cases, the Board concluded that the union had failed to exercise due diligence in the investigation of such allegations and refused to permit the responding party to rely on the new allegations. By contrast in this case, as noted, Avery and the EBAs made the allegations in the responses which were filed two days prior to the hearing, as contemplated by the Board's Rules. Further, the OE and the Labourers have been aware of most if not all of those allegations for some time, since Avery apparently relied upon the same allegations within the context of the sector dispute. Indeed, it is on this basis that the OE and Labourers argue that if reasonableness is

relevant, then these grievances should be remitted to Vice Chair Slaughter for determination.

Whether, on the Employer's Best Case, Reasonableness is a Factor in the Calculation of Damages in This Case

23. For the purposes of this portion of the decision, I assume that the facts pled by Avery in its July 12, 2012 response establish that Avery reasonably concluded that the work in question was in the sewer and watermain sector and tendered for the work on that basis.

24. Avery argues that the same principles should apply to the calculation of damages in grievances arising from an incorrect sector determination by an employer as apply to the calculation of damages in grievances arising from an incorrect jurisdictional assignment by an employer. It argues that since *Sayers & Associates Limited*, [1994] O.L.R.D. No. 3212 the Board only awards damages in a grievance arising from an incorrect jurisdictional assignment where the impugned work assignment is found by the Board to have been made in an arbitrary or otherwise unreasonable fashion. Avery cites *Roberts Group Inc.* [2004] OLRB Rep. Sep./Oct. 972 as illustrative of this approach. Avery argues that *Sayers* articulated three reasons for this approach to damages in grievances arising from incorrect jurisdictional assignment, each of which is equally applicable to grievances arising from incorrect sector assignment.

25. First, the Board determines both jurisdictional disputes and sector disputes in an expedited manner using a consultation process. The result of this is that, in general, the parties obtain timely decisions which permit the proper re-assignment of the work before it is completed. Avery cites a number of decisions in which it asserts the Board was able to give such timely determinations of sector disputes: *Canform Structures Ltd.*, [2004] OLRB Rep. Nov./Dec. 1216; *V.K. Mason Construction Co.*, [2009] OLRB Rep. Nov./Dec. 985; *Interpaving Ltd.*, [2001] OLRB Rep. 1191.

26. Second, the precedential value of the Board's determination of a jurisdictional dispute or sector dispute is significant for future work assignments. The significance of this is well illustrated in *Bondfield Construction Co.,* [2007] OLRB Rep. May/July 499, in which a general contractor found to have subcontracted work in stark contradiction to among other things a prior jurisdictional decision over identical work in the same Board Area involving the same unions was ordered to pay damages in a grievance arising from the assignment. Avery cites a number of Board decisions which it asserts provide similar certainty with respect to sectors in which certain types of work fall: *Canform Structures*; *Yukon Construction Inc.*, [2004] OLRB Rep. Sep./Oct. 1001; *Interpaving*; *V.K. Mason*; *Barclay Construction Group Inc*., [2008] OLRB Rep. Mar./Apr. 136; *Magine Inc.*, [2004] OLRD NO. 3885; *H. Kerr Construction Ltd*., [1999] OLRB Rep. Jul./Aug. 609; *Matthews Contracting Inc.*, [1993] OLRB Rep. Dec. 1332; *Sault Ste. Marie (City),* [2002] OLRB Rep. Sep./Oct. 870.

27. Third, Avery argues that the expedition of the consultation process means that the decisions which result are "not necessarily perfect or correct". Indeed, with respect to

the sector determination in relation to the work in question in these grievances Avery states:

> [I]t is respectfully submitted that the within sector determination is inconsistent and arguably incorrect, if not unreasonable in that the Board found that the sector of the Project should be determined in its entirety, determined or decided that the sector was ICI, but it also confirmed the agreement of the parties that part of the Project was NOT [Avery's emphasis] in the ICI sector.

28. I begin by noting that I reject Avery's third submission. Contrary to Avery's suggestion, it finds no support in *Sayers*. Further, it is wrong in law. The Board adopts procedures appropriate to the nature of the disputes before it and the labour relations realities within which they arise. The Board's ability to adopt expedited procedures with respect to jurisdictional disputes and sector determinations, and indeed with respect to any matter arising from the construction provisions of the Act, is expressly provided for by the Act. Decisions of the Board are final, whether made by means of expedited procedures or not. They are not subject to collateral attack in subsequent proceedings. Finally, I note that if Avery was of the view that some aspect of the Board's decision in the sector determination was incorrect, its recourse was to request reconsideration or, if warranted, apply for judicial review. It did neither.

29. The question remains whether the reasonableness of Avery's initial sector assignment is relevant to the assessment of damages in this case.

30. The OE and the Labourers rely upon *Doug Chalmers Construction Limited*, [2002] OLRB Rep. Sept./Oct. 837, 2002 CanLII 17751 (ON LRB), *C.E. Lummus Canada Ltd.*, [1984] OLRB Rep. May 686, 1984 CanLII 984, *Inscan Contractors (Ontario) Inc*., 1986 Can LII 1485 (ON LRB), *Future Care Limited*, 1990 Can LII 5845 (ON LRB), *Delta Catalytic Industrial Services Ltd.*, 2001 CanLII 16924 (ON LRB), *698806 Ontario Limited c.o.b. as Gap Construction*, [2009] OLRD No. 3155, and *Williams Contracting Ltd.*, 1980 CanLII 869 (ON LRB) to argue that it is not.

31. In each of *Inscan Contractors (Ontario) Inc.*, *Future Care Limited*, *Delta Catalytic Industrial Services Ltd.*, *Gap Construction* and *Williams Contracting Ltd.* an employer and a union were parties to multiple collective agreements, relating to different sectors. The employer employed members of the union to perform work, but was found to have paid for it under the wrong collective agreement. In each case, the employer was ordered to pay damages. However, in none of these cases did the employer argue that damages should not be awarded on the basis that it had acted reasonably in making its initial decision. I do not find them to be of assistance in determining the issue raised by Avery and the EBAs. These matters appear to be of first instance with respect to that issue.

32. I commence, as the Board recently did in *B.G. High Voltage Systems Limited*, 2012 CanLII 56704 (ON LRB), by noting that the principle which the Board has applied to damages arising from jurisdictional disputes is an exception to the general rule that damages will be awarded to put the parties in the same position they would have been in had there not been a breach of the collective agreement. As is the case in the common

law of contract, "it does not matter whether the breach was deliberate or wilful or accidental and unintended" (see Fridman, *The Law of Contract*, cited in *Doug Chalmers* at para. 13).

33. The OE and the Labourers suggest that to the extent that sector determinations cannot be distinguished from jurisdictional disputes, then *Sayers* and the cases which flow from it are bad law and should not be followed. I do not find it necessary to determine that issue. In my view, this sector determination, at least, can be distinguished from jurisdictional disputes.

34. The *sine qua non* of a jurisdictional dispute is the existence of competing claims for the work in question by two or more different unions. In *Robertson Yates Corporation Limited*, [1995] OLRB Rep. Feb. 158 at para. 25 and 26, the Board stated:

> 25. The reality is that contractors and employers are regularly bound to collective agreements with different trades, each of which cover work of a particular sort, binding the contractors or employers to assign particular work to both unions. *The requirements are often irreconcilable.* And the reality is that these collective agreements are negotiated in a context where the bargaining parties are fully aware of this when the agreements are settled. The parties are under no apprehension that the granting of subcontracting protection in these areas of overlap of work jurisdiction will necessarily guarantee a union the work. They both realize that there may still be valid claims to the work by competing unions.
>
> 26. Ultimately, it is the work assignment decision that determines which union is entitled to the work. It is not ordinarily the collective agreement which secures the work, regardless of its clauses. Damages ought not to flow, therefore, simply because the assignment was made contrary to a particular clause in the collective agreement.
>
> (Emphasis supplied)

35. Avery argues that a sector determination may have the effect of changing which union gets to do the work with the result that an employer is faced with competing irreconcilable claims from different unions in the same way as a jurisdictional dispute.

36. Whatever the merits of that argument, a matter I do not decide, it is not this case. In this case Avery was not faced with irreconcilable claims: it was faced with two (or more) potentially applicable collective agreements with each of the OE and the Labourers. The same workers were going to do the work irrespective of which collective agreements applied. Avery took a calculated risk that lower cost collective agreements applied. It was wrong. Further, in theory at least, it was open to Avery to attempt to obtain agreement with each of the OE and the Labourers and, in the case of the ICI Agreements, the respective employer and employee bargaining agencies in advance of

bidding on the job as to which collective agreement applied to their respective portions of the work. Unlike a jurisdictional dispute, the OE and the Labourers and the employee bargaining agencies would have had an incentive to agree in order to ensure that their respective members would be able to perform the work in question. If all those parties had refused to agree with Avery's choice of the lower cost collective agreement, Avery had the option of bidding the job on the basis of the higher cost collective agreement (which might have lost Avery the job) or not bidding on the job at all.

37. As noted, the OE and the Labourers also cite *Doug Chalmers* and *C.E. Lummus* in support of their positions.

38. In *Doug Chalmers*, an employer employed members of the union, but did so without obtaining referral of those members from the union in breach of the collective agreement. The union sought damages equivalent to wages and benefits for all hours worked, relying upon *Blouin Drywall* (1975) 57 DLR (3d) 199 (Ont. C.A.). The employer argued that this would have the effect of penalizing it for an innocent error. It sought to analogize its situation to a dispute between two unions over work assignment and argued that *Sayers* should apply. The Board rejected the employer's argument. It stated that in the case before it "there was no competing or conflicting collective agreements and therefore the rationale described in [*Sayers* and *Roberson Yates Corporation Limited*] is simply not applicable here" (see para. 14). Rather the applicable principle was, as stated by the Board at para. 11:

> [W]here a violation of the collective agreement is established and there is an ascertainable loss that arises as a direct consequence of that violation, damages are properly awarded. The Board does not assess whether the violation of the collective agreement was done deliberately, negligently, mistakenly, or inadvertently in good faith.

39. *C.E. Lummus* arose from an application in which an employer had sought to impose a four day work week, consisting of nine hour days. The employer took the position that all hours were to be paid at regular time. The union (the Labourers) took the position that the ninth hour constituted overtime and was to be paid accordingly. The employer disagreed and refused to permit the union members to work. The Board held that this constituted an illegal lock out and that damages would flow. The decision in question was concerned with the proper calculation of those damages.

40. The employer argued, among other things, that the members of the union had in fact not lost anything at all. It argued that as a group the union's members worked the same number of hours. The Board rejected this argument for essentially two reasons. The second of its reasons, which is not relevant to the issue at hand, was that the employer simply had not proven that there was in fact no loss of overall hours. The first of its reasons was that the case was not analogous to *Blouin Drywall*, where the hiring of non-union members constituted a wrong to union members as a group. Rather, the case was one in which a wrong had been done to the specific union members whom the employer had not permitted to work the ninth hour. In this respect, the Board made the comment relied upon by the OE in this case (at para. 6):

> The individual Union members who held jobs on the day shift at Eldorado, and who were wrongly denied the opportunity to work a ninth hour a day, are readily identifiable, and other members who may have gotten the day shift's work did so only as a result of the wrongful act of the employer. The circumstances, then, are more directly analogous to a case where, for example, a Labourer is wrongfully discharged, and another Labourer is hired in his place. The second Labourer gets his opportunity only because of the first one's unlawful discharge, and it has never been viewed as an answer to the first Labourer to say that the money to which he was entitled went to another member of his Union. The employer in all such cases pays twice, not as a penalty, but because that is the only way that the first individual can be compensated for his loss.

41. I note that in this case, unlike *Doug Chalmers* or *C.E. Lummus*, the employer was faced with two (or more) potentially applicable collective agreements with each of the OE and the Labourers. In that sense, Avery could be said to have been faced with "competing" collective agreements. But, as discussed above, they were not competing in the sense that Avery was faced with irreconcilable obligations to two or more unions. In my view, therefore, this case cannot be analogized to jurisdictional disputes. Rather, the ordinary principles apply. The reasonableness of Avery's decision is irrelevant.

42. It appears, therefore, that Avery owes damages to the individual union members who performed the work equivalent to the difference in the compensation which they received under the Civil Agreements and the compensation which they were entitled to receive under the ICI Agreements. The calculation of these damages is remitted to the parties. Should the parties be unable to agree, any one of them may request the Board schedule a hearing. In the event that no party contacts the Board to request one or both of the grievances be re-scheduled within six (6) months from the date of this decision, the Board will conclude that grievance or grievances have been resolved, or in any event that the OE, the Labourers or both, as the case may be, have no interest in pursuing their respective grievances further and the applications will be terminated.

43. I am not seized.

"Ian Anderson"
for the Board