

#20 AVOIDING DELAY IN ARBITRATION

I. PURPOSE

The *Labour Relations Code* gives the Labour Relations Board a role in ensuring expeditious arbitration. The Board also has a new power to establish guidelines for avoidance of delay in arbitration. See: *Section 140(2)*.

This Bulletin outlines how the Board intends to develop these guidelines. It also describes the Board's power to speed up an arbitration that has been unduly delayed.

II. BASIC APPROACH

The Board's view is that arbitration is primarily the responsibility of the parties to the collective agreement. Parties are responsible for making their own grievance and arbitration process work in the context of their particular work environment.

In processing specific complaints about delay, the Board believes informal intervention is usually successful. Informal efforts should be used in preference to formal intervention so long as those efforts are effective.

The Board believes it should fully consult those in the industry, and examine the various causes of delay before establishing firm guidelines.

The Board will encourage those involved in arbitration to form a consensus on appropriate standards. However, the Board believes the *Labour Relations Code* reflects a view that delay has become a problem and that some change is needed.

III. COMPLAINTS OF DELAY

Any party to an arbitration can complain to the Board that the matter is being unduly delayed. Such a complaint can be made anytime after the case is submitted to arbitration, whether before or after any hearing. See: *Section 140(1)*.

The complaint should be in writing. It should detail:

- who is involved,
- what has been done so far,

- what it is that is delaying the process,
- what the party wants the Board to do to expedite the process, and
- a statement in a form prescribed by the Board, confirming the application has been served in a manner approved by the Board, on any parties known to be affected by the proceeding or subsequently added by the Board.

See: Rules of Procedure, Rules 5.1, 6, 7.

The Director of Settlement will review the application for completeness and obtain any additional information necessary. The Director may try to resolve the delay informally, or refer the matter to the Chair. *See: Rules of Procedure, Rule 22.*

The Chair will consult the parties informally and attempt to resolve the delay. If necessary, the Chair may require submissions or refer the matter to a hearing.

If the matter is referred to hearing, a Board panel will hear the complaint and issue any remedial order necessary under section 140(1)(a) or (b). If undue delay is found, the Board has a general power to issue whatever directive the Board finds necessary. The Board can replace an arbitrator or arbitration board with a new arbitrator or arbitration board if such a step is needed to get the case concluded. *See: Section 140(1)(a), (b).*

IV. AVOIDING DELAY

The Board offers some modest suggestions that may help avoid delay.

- Parties should fully assess their cases early in the process. Many arbitrators believe the high rate of cancellation caused by last minute settlements is a major cause of delay.
- Grievance mediation can assist in resolving the grievance early in the process. If no settlement is reached both parties are free to proceed to arbitration, perhaps with the issues in clearer focus.
- Scheduling difficulties can often be resolved by a timely conference call involving all affected parties.
- Arbitrators should be advised of any urgency in a case.
- Parties seeking expeditious arbitration can ask their counsel, nominees and chairpersons whether they can handle the case expeditiously, and make alternative appointments if they cannot.
- In appropriate cases, an oral or brief letter decision may avoid the delay caused by preparing extensive written reasons. Parties should tell arbitrators if such an expedited decision would be welcome.

See also:

Rules of Procedure

For further information or answers to any questions regarding this or any other Information Bulletin please contact:

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