

Mohamed Elkareem v ATU Transit Union Local 113, 2025 CanLII 77203 (ON LRB)

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ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0065-25-U**

Mohamed Elkareem, Applicant v ATU Transit Union Local 113,
Responding Party v The Toronto Transit Commission - TTC, Intervenor

OLRB Case No: **0519-25-UR**

Mohamed Elkareem, Applicant v UNION ATU Local 113, ATU Canada,
and **Toronto Transit Commission**, Responding Parties

OLRB Case No: **0843-25-IO**

Mohamed Elkareem, Applicant v **ATU Local 113**, ATU Canada, Toronto
Transit Commission (TTC), WSIB, Manulife Canada, Responding Parties

BEFORE: Peigi Ross, Vice-Chair

DECISION OF THE BOARD: July 11, 2025

1. Board Case No. 0519-25-UR is an application under section 50 of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, as amended ("OHSA").
2. Board Case No. 0843-25-IO is an application for an interim order under the *Labour Relations Act*, 1995, S.O. 1995, c.1, as amended (the "LRA").
3. Board Case No. 0065-25-U is an application filed under section 96 of the LRA alleging a violation of section 74 by ATU Local 113.
4. The Board is in receipt of a letter of complaint filed by the applicant. In brief, he complains about what he perceives as unfairness in the Board's processes and the manner in which his applications have

been processed by the Board. He asks for reconsideration of the Board's decisions dated June 13 and 19, 2025. Mr. Elkareem did not file a formal request for reconsideration; however, the Board will address his correspondence as such.

5. In *Baron Metal Industries Inc.*, [2001] OLRB Rep. July/August 931, the Board emphasized the importance of finality of the Board's decisions and described the limited circumstances in which the Board generally exercises its power of reconsideration:

15. The limitations upon requests for reconsideration are well-known. The Board reconsiders its decisions in limited circumstances. It balances the public interest in the finality of Board decisions against the need to correct decisions which are erroneously made, or which were made on the basis of inadequate or misleading information, or by default. The limited scope for reconsideration is described in *Canadian Union of General Employees*, [1975] OLRB Rep. Apr. 320, at 324, ¶ 11; *Ellis Don Limited*, [1989] OLRB Rep. Mar. 234, at 235, ¶ 5; *John Entwistle Construction Limited*, [1979] OLRB Rep. Nov. 1096, at 1097, ¶ 5; *The Doctor's Hospital*, [1983] OLRB Rep. Apr. 493, at 496, ¶ 2; *Roy Construction And Supply Company Limited*, [1983] OLRB Rep. May 716, at 716, ¶ 1.

6. The grounds on which reconsideration may be sought can be summarized as being: the request raises important issues of Board policy which have not been addressed adequately or at all; a party wishing to make a representation has not had an opportunity to do so previously; relevant evidence which could not previously have been obtained by reasonable diligence has become available and would likely affect the decision; or an obvious error has been made by the Board. The Board's approach is stringent - in the interests of finality, it will reconsider its decisions only when that is clearly required.

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7. By way of a decision dated June 13, 2025, the Board removed Manulife as a party to Board Case No. 0519-25-UR. The Board dismissed the applicant's request for reconsideration of that decision on June 19, 2025.

8. By way of its June 13, 2025 the Board states as follows:

5. The applicant does not suggest that he has an employment relationship with Manulife, and there is nothing in the application to suggest that, beyond its role as an insurance company responsible for the administration of certain aspects of the employers benefits plans, Manulife was acting on behalf of the employer when it adjudicated and ultimately denied his benefits claim. The applicant's claim is that Manulife's decision somehow exacerbated the employer's alleged improper actions, but there is nothing to suggest that Manulife directly engaged in reprisal.

6. For these reasons, Manulife is removed as a party and those parts of the application in which the applicant seeks a remedy against Manulife are struck.

7. I note that in his submissions to the Board in response to Manulife's motion, the applicant appears to request an interim order. The Board will not address that matter. If the applicant wishes to apply for an Interim Order he must file a completed interim order application (available on the Board's website). However, the Board will not generally order monetary remedies by way of an interim order. Such a remedy is available only after the hearing on the merits.

9. By way of its June 19, 2025 decision, the Board dismissed the applicant's request for reconsideration of its earlier decision. The Board set out the allegations against Manulife included in the application then provided as follows:

15. In his RFR [request for reconsideration], Mr. Elkareem repeats these allegations and makes legal argument to the effect that benefit providers such as Manulife may be implicated in reprisal applications under an expansive reading of section 50 of the OHSA. None of the Board cases cited by Mr. Elkareem in support of this position could be located on CanLII as the provided citations would suggests.

16. I accept that a benefits provider might, in some circumstances, be said to be "acting on behalf of an employer" such that it may be a proper party to an application under section 50 of the OHSA. However, Mr. Elkareem provides no detail of what is otherwise a bald, unsupported allegation that Manulife was a party to an alleged reprisal. A review of the material before the Board makes it clear that he was denied short- and long-term disability benefits, a decision with which he very clearly

strongly disagrees. However, in the absence of something more, the mere fact that Manulife made a decision about Mr. Elkareem's entitlement to benefits under the applicable benefits policy does not, by itself, give rise to any reasonable inference that it was acting on behalf of the TTC in furtherance of some kind of adverse treatment of Mr. Elkareem because he sought protections under the Act from his employer.

10. The Board will not reconsider a request for reconsideration. If Mr. Elkareem wishes to seek judicial review he should file an application with the Court.

11. Even if the Board were to consider Mr. Elkareem's request for reconsideration it would not grant that request.

12. He asserts that he did not receive Manulife's motion asking to be removed as a party to this application and claims that the lack of notice violated the Board's procedures and resulted in a denial of fairness and due process. Mr. Elkareem responded to Manulife's June 6, 2025 letter on June 11, 2025. It was those submissions which the Board considered in making its decision.

13. The applicant says that the Board erred when it commented that the cases he relied on could not be located. He asserts that this does not take away from their legal relevance. Mr. Elkareem does not however provide any clarity on the case citations, nor does he provide copies of the cases themselves. The Board will not simply accept a party's assertion of the interpretation of a case but will rather read and consider the application of any cases put before it. In the absence of copies of the cases or any information that would permit the Board to locate them, the Board will not consider submissions in relation to the cases. In these circumstances the Board concluded that the case citations such as they are, may well have been generated through AI and may well be hallucinated cases.

14. Mr. Elkareem asserts that he has new information which supports his contention that Manulife was acting on behalf of the employer when it reprimed against him by dismissing his benefits claim. He attaches a number of documents. The benefits claim file goes back many years and all of this information was reasonably available to Mr. Elkareem well before he filed his application with the Board. He cannot attempt to supplement his application at this point of the proceedings. This alone is sufficient to dismiss a request for reconsideration if the

Board were to consider it. In any event, the applicant continues to make bald allegations that Manulife was acting on behalf of the TTC in effectuating a reprisal. He says certain documents prove its involvement but aside from providing a copy of the documents he does not explain how Manulife was carrying out a reprisal as opposed to simply adjudicating his benefits claim. Without making any findings, I note that Manulife's involvement in the processing of his benefits claims and its communications with Mr. Elkareem and the TTC is not surprising given its role in administering benefits claims. But this alone without more does not establish a *prima facie* violation of the Act by Manulife.

15. For clarity, Board File 0519-25-U will continue albeit without Manulife as a party. Without prejudice to any challenge by the other parties, if and when this matter proceeds to a hearing the applicant may summons a representative(s) of Manulife to give evidence at the hearing. I make no comment about whether any such evidence is admissible or relevant.

Board Case No. 0843-25-IO – Interim Order Application

16. The applicant complains that by virtue of the Board's June 19, 2025 this application was effectively erased from the Board's system. In point of fact, as was made clear by the Board's decision, this application was dismissed because it related to events that occurred in 2023. The Board found that there was nothing urgent about the matter and given the delay in filing there was no indication of irreparable harm. He does not provide any substantive submissions about why the Board should reconsider its decision.

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17. The Board merely declined to consider the applicant's request for this matter to be heard with Board Case No. 0519-25-UR on the basis that there are a number of procedural issues (various motions to dismiss) yet to be addressed in each of these applications. The applicant provides not substantive submissions about why the Board should reconsider its decision and, in any event, for the reasons set out herein, the Board would decline that request. The matter can be revisited after the procedural issues are addressed. I leave those matters to be processed by the Board in due course.

Other

18. Finally, the applicant asserts that his motions have been ignored by the Board. I note that he has requested production of certain documents from both CUPE and the TTC. The Board is not in receipt of that request although both CUPE and the TTC objected on the basis that the request is premature given that the various motions to dismiss have yet to be addressed. I agree. The applicant's production request may be revisited once these issues are addressed by the Board.

19. The applicant's request for reconsideration is hereby dismissed.

20. I am not seized.

"Peigi Ross"

for the Board