Ontario

ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **2684-24-UR**

Noura Ahmed, Applicant v **Troy Powell, Peggy Pulliam, Jese Stovka at Absorb LMS Software**, Responding Party

BEFORE: Jerry Raso, Vice-Chair

DECISION OF THE BOARD: June 9, 2025

1. Board File No. 2684-24-UR is an application filed on February 6, 2025 pursuant to the provisions of section 50 of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, as amended (the "Act). The applicant alleges workplace harassment during their employment and that their termination on February 7, 2023 was in reprisal for their complaints about that harassment, among other things.

2. The responding parties requested that the application be dismissed in its entirety for delay as it was filed more than two years after the alleged unlawful reprisal.

3. In its February 26, 2025 decision, the Board, differently constituted, gave the applicant an opportunity to provide submissions as to why the section 50 complaint should not be dismissed for delay.

4. The applicant provided their submissions on delay on March 12, 2025 ("the March 12, 2025 submissions").

5. In its April 3, 2025 decision ("the April 3 decision"), the Board dismissed the application for delay.

6. The applicant submitted a request for reconsideration of that decision on May 12, 2025, five business days after the deadline for filing a request for reconsideration, provided no explanation for the delay in filing the reconsideration application and no request for an extension to the filing deadline was made by the applicant. The request for reconsideration could therefore be dismissed for being untimely.

Notwithstanding the delay, the Board has reviewed the substance of the reconsideration request and does not find that the applicant has established any basis for reconsideration of the Board's April 3 Decision, and so it is dismissed for that reason.

The Test for Reconsideration

7. The Board's discretionary power to reconsider its decisions is set out in section 114(1) of the *Labour Relations Act, 1995* S.O. 1995, c. 1, as amended, which provides as follows:

> 114.(1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the Board thereon is final and conclusive for all purposes, but nevertheless the Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

8. The Board's approach to requests for reconsideration is as outlined in *Mir Hashmat Ali v Ontario Public Service Employees Union-OPSEU* 2023 CanLII 39530 (ON LRB). The test is a stringent one:

> 10. The Board has repeatedly stated that, in the interest of finality, it will not reconsider its decisions unless there are good reasons for doing so. The Board's approach to a request for reconsideration was summarized as follows in *Baron Metal Industries Inc.*, [2001] OLRB Rep. July/August 931 at paragraphs 15 and 16:
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> > 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, para 11; *Ellis Don Limited,* [1989] OLRB Rep. Mar 234, at 235, para 5; *John Entwistle Construction Limited,* [1979] OLRB Rep. No. 1096, at 1097, para 5; *The Doctor's Hospital,*[1983] OLRB Rep. Apr. 493, at 495, para

> 2; *Roy Construction and Supply Company Limited,* [1983] OLRB Rep. May 716, at 716, para 1.
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> 16. 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 decision only when it is clearly required**." (emphasis added).

9. To ensure finality, the Board's reconsideration power is rarely successfully invoked. The rationale for this is set out succinctly in *Syed Mohammad Zubair Ali v United Steelworkers*, 2016 CanLII 4489 (ON LRB), where the Board stated as follows:

> 10. There are sound policy reasons why the Board adopts this approach. As the language of subsection 114(1) of the Act makes clear, the Board's decisions are intended to be "final and conclusive for all purposes". The parties to an application are entitled to know where they stand and to order their affairs accordingly without endless rounds of review and appeal. Therefore the Board takes a stringent view of the circumstances wherein it will grant reconsideration: *Baron Metal Industries Inc.*, [2001] OLRB Rep. July/August 931. This approach is consistent with the statutory purpose set out in section 2 of the Act to "promote the expeditious resolution of workplace disputes". In the words of Estey C.J.O. (as he then was) in *Journal Publishing Co. of Ottawa Ltd. v. Ottawa Newspaper Guild* (unreported, March 31, 1977, Ont. C.A.): "labour relations delayed are labour relations defeated and denied".

10. In other words, as stated in *Tiziano Scotta v Drain Land Inc*., 2025 CanLII 25740 (ON LRB):

> As a general proposition, the Board will not reconsider a decision unless the requesting party has new evidence that would be practically conclusive of an issue and that it could not have reasonably obtained earlier, or the party has new

objections or arguments that it had no opportunity to raise earlier.

11. The applicant states that they seek reconsideration of the April 3 Decision for the following reasons:

(i) obvious errors in fact and law;
(ii) new, previously unavailable evidence has become available; and
(iii) they were denied the opportunity to make full submissions due to circumstances beyond their control.

12. As stated above, the Board's test is stringent. In the interest of finality, it will reconsider its decision only when it is clearly required. In this case the applicant has not met this test as they have not provided any compelling reason for the Board to reconsider its April 3 Decision and the request for reconsideration is denied on this basis. The request does not provide any new previously unavailable evidence that would be practically conclusive of an issue, nor does it raise new objections or arguments that could not have been raised earlier. Rather, the request for reconsideration makes arguments that were previously made and rejected or could have been made but were not. Further, there were no obvious errors in the April 3 Decision.

Alleged Obvious Errors

13. The applicant submits that an "obvious error" made in the April 3 Decision was the failure to consider the distinction between "awareness of mistreatment" and "awareness of the correct legal recourse and procedural step required". In this, they appear to be suggesting that they were not aware of their legal recourse and the steps required. This argument was not made in their March 12, 2025 submissions but could have been. A request for reconsideration is not an opportunity to raise new arguments and thus, this new submission of the applicant does not establish a ground for reconsideration. Further, as noted in the decision, the applicant engaged counsel to assist them in pursuit of redress for an alleged violation of section 50 of the Act. The decision noted that several letters were sent on their behalf and by them to their former employer, alleging a violation of section 50 and threatening to take the necessary legal steps for that violation. The Board also notes that the case cited by the applicant - *Ljuboja v Aim Group Inc,* 2013 CanLII 76529 (ON LRB) - relates to a determination of

whether an applicant had established a *prima facie* case, and is of no assistance to the applicant in this case.

14. Another submission of the applicant was that the Board made an obvious error by failing to recognize that "ongoing efforts to resolve a dispute informally – whether through internal processes or communication – do not, on their own, demonstrate an abandonment or waiver of legal rights". They cite in support of this assertion *Neal Ramchaitar v Amalgamated Transit Union,* 2024 CanLII 137676 (ON LRB). This decision is of no assistance as the decision does not stand for such a principle. In any event, the Board's April 3 Decision did not state that the applicant waived or abandoned their legal rights under section 50 of the Act. It did, however, state that they delayed too long (26 months) in filing their application. This is not an error of law.

15. The applicant then asserts that the Board did not consider the impact of their workplace-related health struggles, caregiving responsibilities, and international displacement that they say they endured and continued to suffer from, and that the Board did not properly consider the role of health in the context of procedural delays. However, in the April 3, 2025 decision the Board did consider but rejected the applicant's original submissions regarding the role they claimed their health played in the delay:

> By not substantiating any medical reasons for the delay, they have not provided a satisfactory reason for the Board to deviate from its usual approach of dismissing applications which are filed more than one year after the alleged events. For a discussion regarding the importance of providing details substantiating medical reasons for delay, see *Christopher Kargovski v CUPE Local 1196*, 2022 CanLII 114385, *Daley v. Amalgamated Transit Union, Local 1572*, 1982 CanLII 864 (ON LRB), *Tamara Ann Moro v Ontario Secondary School Teachers' Federation*, 2015 CanLII 4667 (ON LRB) and *Jim Cooper v Unifor*, 2020 CanLII 77530 (ON LRB).

Again, reconsideration applications are not an opportunity to repeat what was already argued and rejected.

16. The applicant then submitted that the Board said in the April 3 Decision that the applicant "did not raise any question of statutory interpretation, nor any actual confusion about the applicable deadline." In fact, that statement does not appear in the April 3 Decision. The

applicant appears to be saying that they did not know that it was legally permissible to pursue a negotiated settlement with her former employer and file an application with the Board at the same time. Again, this is a new argument which could have been made in her March 12, 2025 submissions but was not. Reconsideration is not an opportunity to get a "second kick at the can". Further, even if the Board were to permit the applicant to rely on this impermissibly newly made argument, it would not change the result of the April 3 Decision. The Board does not typically grant requests for reconsideration because applicants were unaware of their legal rights and responsibilities at the material times and sees no reason to make an exception to that approach in this case.

17. The applicant then attempts to reargue the issue of representation by counsel. In her request for reconsideration, the applicant states that though they retained the services of a lawyer at one point they did not retain counsel continuously for financial reasons. This argument was also made in the applicant's March 12, 2025 submissions, considered and rejected:

> 10. The applicant also asserts that financial reasons made it difficult for them to secure legal representation in filing this application. As stated in *Tamara Ann Moro v Ontario Secondary School Teachers' Federation*, "The Board has often stated that the legal costs associated with utilizing a lawyer in Board proceedings does not justify delay (see *Moore Butler, supra*.)".

Alleged New Evidence and Exceptional Circumstances

18. In the request for reconsideration the applicant cites, for the first time, alleged additional specific causes of stress that they claim negatively impacted their ability to file the application in a timely fashion:

> I was the sole caregiver for my child following urgent surgery, while also supporting my child's family following the death of her grandfather and unlawfully evicted from my residence in New Cairo, resulting in homelessness and the theft of critical legal, identification, and work-related documents and equipment.

19. In the March 12, 2025 submissions, the applicant did address the issue of "stressors", and cited other different stressors. They could have cited these new stressors in their March 12, 2025 submissions

along with the stressors they previously cited. This is not an opportunity to raise new issues.

20. The applicant also submitted documentation concerning these additional alleged stressors in her reconsideration application - copies of correspondence between the applicant and Canadian embassy personnel in Egypt from March 12, 2025 and April 3, 2025, April 24, 2025, May 9, 2025 as well as correspondence from July, 2024. Broadly speaking, that correspondence appears to relate to ongoing legal matters related to her tenancy and an alleged break-in which they say resulted in the loss of her passport, divorce papers and certain records relating to their child. They describe unsatisfactory efforts to work with legal counsel there and their attempts to seek assistance from the Canadian embassy. They also submitted a letter dated May 5, 2025 from a "vascular surgery consultant" from Egypt with respect to treatment they received on March 18, 2025, but this is a date after application filing date and it is therefore not relevant.

21. Just as the additional stressors could have been identified in the March 12, 2025 submission, the Board finds that the documentation could have been obtained by reasonable diligence and provided in the March 12, 2025 submissions. Secondly, and most critically, there is nothing in the documentation which would establish that they were incapable of filing this application earlier than two years after the termination of their employment.

22. The applicant also provides in the request for reconsideration a copy of the February 6, 2025 letter from a health care provider. This does not assist her as it was already submitted in her original application and found by the Board not to provide any connection between health issues and her late filing of the original application.

23. The applicant also submitted copies of correspondence between the applicant and Canadian embassy personnel in July 2023 relating to difficulties they encountered at the airport at Munich, a July 22 2023 letter of complaint to Lufthansa airlines and Munich airport officials, a July 27, 2023 request to a chiropractor for treatment, correspondence regarding a zoom meeting with a lawyer from April 2022 and confirmation from their lawyer in September 2023 that their divorce had been issued. They also provided copies of airline tickets within the United States from October and November 2023 and an October 2023 operative note from an orthopaedic surgeon. Finally, they provided a copy of an airline ticket from Seattle to Istanbul in November 2023.

24. The Board is not persuaded that this documentation predating the March 12, 2025 submissions could not been provided earlier and in any event, there is nothing in the documentation which would establish that they were incapable of filing this application earlier than the more than two years after the termination of their employment. Again, as the Board noted, during that period they were able to send six demand letters to their employer and retain a lawyer. The applicant has provided no new evidence which would make reconsideration appropriate.

Alleged Denial of Opportunity to Make Full Submissions

25. The applicant submits that they were "denied a full opportunity to present my case and supporting documentation due to circumstances beyond my control". However, they make the same arguments here as they made in their submissions regarding "New Evidence and Exceptional Circumstances". They recount once again the submissions regarding stressors in their life and asserts that these factors denied them the opportunity to make full submissions. They then cite a case, *McDonald v CAAT Academic Union*, 2013 CanLII 76296 (ON LRB), which does not appear to exist. Significantly, the applicant does not assert that the Board denied them the opportunity to make full submissions regarding delay.

26. The applicant also submits that "As a self-represented applicant facing multiple intersecting barriers, including disability, financial hardship, and international displacement, I did not have access to legal counsel or institutional resources that might have enabled faster recovery of missing records. The combination of these circumstances significantly impaired my procedural capacity and prevented me from presenting a full, substantiated case before the dismissal decision was made." This, too, is an argument that could have been made in the original submissions on delay. In any event, the lack of legal representation does not form the basis for reconsideration.

27. Further, in the request for reconsideration they submit that their health denied them the opportunity to make full submissions on delay. The Board did not deny the applicant the opportunity to make submissions. After considering and reviewing her lengthy March 12, 2025 submissions, with attachments, which included the above-noted February 6, 2025 letter from the health care provider, the Board made its determination. Secondly, this is an assertion with no objective substantiation of this claim.

28. For these reasons, the request for reconsideration is denied.

"Jerry Raso"
for the Board