

Bohn v Construction Workers Union, CLAC Local 63, 2026 ALRB 110

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CITATION: *Bohn v Construction Workers Union, CLAC Local 63*, 2026 ALRB 110

September 11, 2026

Directed to: Jade Bohn; Aminga Resources – Mel Mabbott; Construction Workers Union, CLAC Local 63 – Randall Boessenkool / Nathanael Bowles

RE: **A duty of fair representation complaint brought by Jade Bohn affecting the Construction Workers Union, CLAC Local 63 – Board File No. GE-09639**

[1] Jade Bohn (the “Complainant”) is a member of the bargaining unit represented by the Construction Workers Union, CLAC Local 63 (the “Union”). She alleges that the Union breached its duty of fair representation pursuant to section 153 of the *Labour Relations Code* (the “Code”) when it withdrew a grievance (the “Grievance”) relating to the termination of her employment (the “Complaint”).

[2] The Complaint came before an administrative panel of the Board (Scott, Stewart, Worden). Administrative panels conduct documentary reviews to determine if a matter should proceed to hearing or should be summarily dismissed. In conducting a documentary review, the Board proceeds based on uncontradicted facts and, where there is a contradiction in the facts, the Board conducts the review on the facts alleged by the Complainant, provided that they possess an “air of reality”: *Complainant v. AUPE*, [2021] Alta. L.R.B.R. 1. If, after conducting this documentary review, the Board determines that the complaint lacks merit, the Board may, pursuant to section 16(4)(e) of the *Code*, summarily dismiss the complaint without a hearing.

[3] The Board may also refuse to accept any complaint that is made more than 90 days after the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint: *Code*, s. 16(2).

[4] Having reviewed the documents and the submissions of the parties, the Board concludes that the Complaint is untimely and should be summarily dismissed. Our reasons follow.

Background

[5] The Complainant worked for Primoris Mine Services Canada (the “Employer”) as a Labourer and Welder’s Helper beginning in May 2024. The Union and the Employer are parties to a collective agreement (the “Collective Agreement”).

[6] During her employment with the Employer, the Complainant was disciplined numerous times for safety-related infractions. She did not raise concerns with the Union about this discipline. On July 8, 2025, the Complainant was involved in an incident while operating a

company vehicle. The Employer investigated the incident, including obtaining a written statement from the Complainant. The Employer terminated her employment for cause on July 9, 2025. A Union Steward attended the discipline meeting with the Complainant. The Complainant did not raise any objection to her dismissal or request the Union's assistance in challenging the termination. Accordingly, the Union did not file a grievance.

[7] On July 15, 2025, the Employer received an email from Mel Mabbott ("Mabbott") who identified himself as the Complainant's representative and sought "financial restitution" from the Employer arising from the Complainant's termination. The Employer directed Mabbott to the Union. Mabbott then emailed the Union that same day asking the Union to confirm its intention to file a grievance on the Complainant's behalf within seven business days. Notably, Mabbott specifically referred to section 153 of the *Code* and the Union's duty of fair representation.

[8] The Union responded to Mabbott's email, asking to speak with the Complainant directly. Mabbott responded, directing the Union to communicate with him and reiterating that the Union had a duty of fair representation pursuant to section 153 of the *Code*. On July 17, 2025, the Union responded, indicating that it was gathering information from the Employer but that it required information from the Complainant to be able to assess the merits of a grievance. The Union attached a list of questions / topics that it wanted to ask the Complainant about. The Union also asked the Complainant to confirm that she was authorizing Mabbott to communicate with the Union.

[9] On July 18, 2025, Mabbott responded, including a written authorization from the Complainant. Again, Mabbott referenced section 153 of the *Code* and the Union's duty of fair representation. The Union responded, noting that it still had not heard from the Complainant and that, in the absence of information from her, its ability to assess the merits of a potential grievance was limited. The Union also noted that, in his communications with the Union, Mabbott had referenced legal authorities that appeared to be AI hallucinations. That is, authorities generated by artificial intelligence as opposed to real case law. Other legitimate authorities referenced appeared to be misquoted or irrelevant. The Union asked Mabbott to ensure that subsequent submissions contained accurate and factual information. Mabbott responded by email, again referencing section 153 of the *Code*. The Complainant did not respond.

[10] On July 21, 2025, Mabbott wrote to the Employer, the Employer's legal counsel, and the Union reiterating his demand on the Complainant's behalf for financial compensation from the Employer. Again, he referenced the possibility of a duty of fair representation complaint.

[11] The Union responded on July 24, 2025 stating that a draft grievance had been prepared and would be filed soon. The Union repeated its request that the Complainant provide her version of the events that led to the termination of her employment. The Union stated: "Her response remains essential to completing our investigation and effectively representing her interests."

[12] Also on July 24, 2025, counsel for the Employer wrote to Mabbott and the Union indicating that it would be working with the Union as the Complainant's bargaining agent in respect of her employment with the Employer. Mabbott responded on July 27, 2025 again reiterating that the Complainant reserved her rights under the *Code*, "including a potential duty of fair representation complaint".

[13] The Union filed the Grievance on July 28, 2025. On July 29, 2025, Mabbott wrote to the Union demanding that certain steps be taken with respect to the Grievance by July 31, 2025. He

stated: “Should this matter continue to be stalled without lawful justification, we will proceed with...**A Duty of Fair Representation (DFR) complaint** under Section 153” [emphasis in original]. That same day, Mabbott also wrote to the Employer, demanding a financial payment on behalf of the Complainant and that certain steps be taken with respect to the Grievance. Again, he referenced the possibility of a complaint before the Board.

[14] On July 30, 2025, the Employer responded to the Grievance. The Employer outlined the basis for its decision to terminate the Complainant’s employment and attached documentation in support of its position, including a timeline of the relevant events. The Union immediately forwarded the documentation received from the Employer to Mabbott and asked him to ensure that the Complainant reviewed it carefully. The Union repeated its request that the Complainant then provide her own account of the events and any relevant context. The Union stated that, without this information, it could not complete its assessment of the Grievance.

[15] On August 14, 2025, Mabbott responded to the Union, providing a “consolidated statement” from the Complainant responding to the questions the Union had provided on July 17, 2025. The answer to several of the questions posed was “part of the [Employer] disclosure package”, suggesting that the Complainant did not dispute the information presented by the Employer. Mabbott concluded stating: “Any further delay in advancing this grievance will prejudice [the Complainant’s] position and will be addressed accordingly.”

[16] On August 18, 2025, Mabbott wrote to the Union asserting that the Union had ample time to review the Complainant’s consolidated statement as well as the Employer’s documents. Mabbott demanded that the Union confirm in writing – by August 19, 2025 – that it would be advancing the Grievance to the next step in the grievance procedure. Mabbott stated:

3. Duty of Fair Representation

Under **s.153 of the Alberta Labour Relations Code**, CLAC has a statutory duty to represent [the Complainant] **without discrimination, arbitrariness, or bad faith**. Given the elapsed time since Step 1 was denied, any further delay in filing to Step 2 will be considered a potential breach of that duty.

If [the Union] does not confirm by **August 19, 2025** that Step 2 has been scheduled, I will have no alternative but to proceed with a **Duty of Fair Representation complaint** before the Alberta Labour Relations Board.
[Emphasis in original]

[17] Also on August 18, 2025, the Union received a legal opinion from its General Counsel regarding the merits of the Grievance (the “Legal Opinion”). The Legal Opinion reviewed the information provided by the Employer in support of the Grievance as well as the information provided by the Complainant in the consolidated statement. The Legal Opinion considered the Employer’s obligation to demonstrate that there was just cause for some form of discipline and, if so, whether the Employer’s decision to terminate the Complainant’s employment was excessive in the circumstances.

[18] The Legal Opinion concluded that the Employer was likely to demonstrate just cause for discipline. Information provided by the Employer showed that the Complainant drove over construction material in a congested loading area causing significant damage to the company vehicle she was operating. The Complainant provided a written statement indicating that she had not seen the debris on the ground and that it must have been under the vehicle before she began driving it. She did not identify any procedural or supervisory issues contributing to the incident.

[19] The Legal Opinion also concluded that the discipline likely was not excessive in the circumstances. At the time of her termination, the Complainant had prior discipline. She received a verbal warning regarding texting and driving on July 31, 2024. On October 9, 2024, she received a written warning for inattentive driving. On November 30, 2024, she was issued a written warning for driving over material lying on a roadway, causing damage to the company truck she was driving. After this incident, her driving privileges were revoked. The Complainant did not raise concerns with the Union about any of these disciplines and none were grieved.

[20] In January 2025, the Employer then began a round of layoffs. Rather than lay the Complainant off, the Employer transferred her to a different role which involved driving. The Employer warned the Complainant that her driving record was a concern and that additional safety-related incidents could result in termination. The Legal Opinion concluded that, given the prior discipline relating to safety issues and the warning that subsequent incidents could result in termination, the Employer appeared to have properly applied progressive discipline.

[21] The Legal Opinion also considered the Complainant's assertion that she had not been properly trained and that this had contributed to her misconduct. The Legal Opinion noted that Employer records showed that the Complainant completed the required orientation upon hiring, which included a HSE Orientation and Hazard Assessment Training. She also signed an acknowledgement of the Employer's transportation manual and vehicle operation policies and completed a competency evaluation documenting her prior industry experience. She underwent a further competency evaluation in August 2024. On November 2, 2024, she attended additional training on safe motor vehicle operation. On December 3, 2024 she completed a defensive driving course through the Employer.

[22] The Legal Opinion further considered the Complainant's assertion that she – as a young female employee in a male-dominated workplace – had been subjected to differential treatment in the workplace. The Legal Opinion noted that the Complainant had not raised concerns when other alleged instances of differential treatment occurred and there were no records to support these allegations.

[23] The Legal Opinion concluded that the facts alleged by Mabbott – namely, that the Complainant's termination was a result of the Employer's alleged failure to provide the Complainant with sufficient training and oversight as well as discrimination contrary to the *Alberta Human Rights Act* – were unlikely to be made out. Thus, the arguments raised by Mabbott were unlikely to support a grievance.

[24] On August 19, 2025 the Union advised Mabbott that it would be withdrawing the Grievance. The Union also wrote to the Complainant directly to confirm that the Grievance would be withdrawn. The Union attached a copy of the Legal Opinion and wrote:

If you disagree with this decision, you have the right to request an internal appeal ...under [the Unions'] Constitution. Please let us know if you would like to pursue this avenue, and we will provide you with the required information.

[25] On August 27, 2025, Mabbott responded stating that he and the Complainant did not consent to the withdrawal of the Grievance. He demanded that the Union confirm, by August 29, 2025, that it would not withdraw the Grievance without the Complainant's consent. Again, he referenced section 153 of the *Code* and stated:

If [the Union] does not comply by the deadline – or proceeds to withdraw contrary to [the Complainant's] direction – she will file a **Duty of Fair Representation** complaint with the **Alberta Labour Relations Board**" [Emphasis in original].

[26] Neither Mabbott nor the Complainant requested an internal appeal.

[27] On September 2, 2025, the Union replied advising that the Grievance had been withdrawn. The Union confirmed that it had provided Mabbott with copies of all arguably relevant materials in relation to the Grievance, including the Legal Opinion. On September 3, 2025, Mabbott wrote to the Union stating: "We have no response to our Aug 19 correspondence. This is **final notice** under **s. 153 of the Labour Relations Code**" [Emphasis in original]. Mabbott provided a further deadline of September 5, 2025 and asked whether the Union had a Board-approved internal appeal process under section 153(6) of the *Code*.

[28] The Union responded that day re-sending its September 2, 2025 email and advising Mabbott that the Union did not have a Board-approved appeal process.

[29] On January 19, 2026, Mabbott wrote to the Union advising that, pursuant to the Union's Constitution, the Complainant was filing an internal appeal of the Union's decision to withdraw the Grievance. Mabbott also asked about the internal appeal process and stated: "Please confirm this appeal will be administered in accordance with [the Union's] statutory **duty of fair representation under s.153 of Alberta's Labour Relations Code**" [Emphasis in original]. Mabbott went on to speak to the timing of the appeal stating:

Where a union maintains an **internal appeal** that is available and approved, any duty-of-fair-representation complaint to the Alberta Labour Relations Board (ALRB) is generally due **within 45 days of the conclusion of that internal appeal**. Absent an internal appeal, the ALRB's general filing window is **within 90 days** of when the member knew or ought to have known of the impugned conduct. These timelines underscore our request for **prompt, precise written procedures and dates**. [Emphasis in original]

[30] Mabbott went on to assert that the Complainant had been requesting an appeal since August 19, 2025. On January 20, 2026, the Union responded advising that, per the Union's Constitution, an internal appeal must be filed within 30 days of the Union's withdrawal decision. The Union asserted that, contrary to Mabbott's assertion, the Complainant had not contacted the Union at all and had not requested an appeal. As more than 30 days had passed since the Union communicated its decision to withdraw the Grievance, the Union declined to hear an appeal.

[31] Mabbott filed this Complaint on behalf of the Complainant on February 9, 2026.

Decision

[32] Having reviewed the materials provided by the parties, the Board finds that the Complaint should be dismissed because it is untimely.

[33] Section 16(2) of the *Code* provides:

16(2) The Board may refuse to accept any complaint that is made more than 90 days after the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

[34] In *Toppin v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 488*, [2006] Alta. L.R.B.R. 31 (“*Toppin*”) the Board set out (at paragraph 30) the general principles to be applied in exercising its discretion to refuse a complaint pursuant to section 16(2) of the *Code*:

1. The 90-day time limit is a legislative recognition of the need for expedition in labour relations matters.
2. “Labour relations prejudice” is presumed to exist for all complaints filed later than the 90-day limit.
3. Late complaints should be dismissed unless countervailing considerations exist.
4. The longer the delay, the stronger must be the countervailing considerations before the complaint will be allowed to proceed. There is no separate category of “extreme” delay.
5. Without closing the categories of countervailing considerations that are relevant, the Board will consider the following questions:
 - (a) Who is seeking relief against the time limit? A sophisticated or unsophisticated applicant?
 - (b) Why did the delay occur? Are there extenuating circumstances? Aggravating circumstances?
 - (c) Has the delay caused actual litigation prejudice or labour relations prejudice to another party?
 - (d) And, in evenly balanced cases, what is the importance of the rights asserted? And what is the apparent strength of the complaint?

[35] The Board further observed that late complaints will generally be accepted from employees where the delay is short; that is, two months or less: *Toppin* at para. 43.

[36] While the Board retains the discretion to accept complaints where the delay exceeds 90 days plus two months, it will only do so where there are “countervailing considerations”: *Shields v Unifor, Local Union No. 1990*, 2025 ALRB 81 at para. 22.

[37] The Complaint alleges that, in failing to advance her Grievance, the Union failed in its duty of fair representation mandated by section 153(1) of the *Code* which states:

No trade union or person acting on behalf of a trade union shall deny an employee or former employee who is or was in the bargaining unit the right to be fairly represented by the trade union with respect to the employee’s or former employee’s rights under the collective agreement.

[38] The Union notified the Complainant of its intention to withdraw the Grievance, as well as her right to an appeal, on August 19, 2025. The Complaint was not filed until February 9, 2026,

nearly six months later. The Complaint was filed well outside the 90-day period prescribed by section 16(2) of the *Code* as well as the additional two-month extension contemplated by the Board in *Toppin*.

[39] Looking at the countervailing considerations set out in *Toppin*, the Board finds that this is an appropriate case to exercise its discretion under section 16(2) to decline to hear the Complaint. We begin by noting that, while the Complainant herself is not a sophisticated applicant, she was – and continues to be – represented by Mabbott. While Mabbott is not a lawyer, his correspondence indicates that he was, from the outset, aware of the provisions of the *Code* regarding the duty of fair representation, including the 90-day time limit to make a complaint. The fact that Mabbott (on behalf of the Complainant) repeatedly demonstrated knowledge of the 90-day time limit and, nevertheless, failed to bring the Complaint in a timely fashion, weighs heavily in favour of the Board's exercise of its discretion under section 16(2).

[40] The Board may not waive prejudicial delay simply because the complainant may have received faulty legal advice: *Toppin* at para. 29. While it may have been inadvisable to rely on Mabbott – whose antagonistic approach only seems to have delayed and hindered the Union's representation of the Complainant, and who failed to file a timely complaint on her behalf – the fact is that the Complainant chose to do so. She cannot now avoid the unfortunate consequence of the decision to appoint Mabbott as her representative.

[41] With respect to why the delay occurred, the information before the Board weighs against accepting the late Complaint. Mabbott appears to suggest that the delay in filing the Complaint is the fault of the Union, whom he says did not provide sufficient information about the internal appeal process, nor did it provide sufficient disclosure of its internal processes. The Board does not accept either assertion. The Union invited the Complainant to request an internal appeal on August 19, 2025. Mabbott did not do so for nearly five months. In the interim, the Union responded to Mabbott's questions about the appeal process and made it clear that it was not going to provide any more information about its handling of the Grievance. If Mabbott wanted more information, his next step ought to have been to file a complaint and seek disclosure via the Board processes. Nothing before the Board suggests that Mabbott needed anything further from the Union to be able to file a complaint. The Union's refusal to provide more information was not a cause of the Complainant's delay.

[42] Similarly, if the Complainant wanted to bring an internal appeal, she or Mabbott simply needed to tell the Union. Mabbott's August 27 and September 3, 2025 correspondence does not do so. Rather, he demands that the Union reinstate the Grievance within three business days, failing which he will file a complaint to the Board.

[43] More significantly, nothing about the Union's internal appeal process prevented the Complainant from filing a timely complaint. Under section 153(4) of the *Code*, where a union has a Board-approved appeal process, the Board may refuse to accept a duty of fair representation complaint where the complainant has not filed an internal appeal, or the internal appeal remains outstanding. Considering this language, Mabbott sought clarification about the Union's appeal process. On September 3, 2025, the Union confirmed that its internal appeal process was not Board-approved. To the extent that the Complainant / Mabbott needed clarification about the process going forward, by September 3, 2025, the Complainant knew, or ought to have known, that she could file an internal appeal. She did not do so for more than five months.

[44] The time to file a complaint, for the purposes of section 16(2) of the *Code*, begins to run on the date when the complainant knew, or in the opinion of the Board ought to have known, of

the action or circumstances giving rise to a complaint. Here, the fact is that the Complainant knew, or ought to have known, of the Union's position regarding her Grievance around August 19, 2025. The Union's communications with Mabbott made it quite clear that, absent an internal appeal, the Union's position was not going to change. Nevertheless, the Complainant did not file an internal appeal for more than five months. The Complainant cannot now leverage her failure to exhaust the Union's internal appeal process to extend the 90-day period to bring a complaint under the *Code*. In the circumstances, there is no basis to find that the Union played a role in the delay in filing the Complaint.

[45] Similarly, regarding whether "extenuating circumstances" caused the delay, the Board acknowledges that, in his reply to the Union's summary dismissal submissions, Mabbott says the Complainant was undergoing serious medical treatment which "limited her ability to provide instructions and finalize this reply". Importantly, this comment appears to explain why the Complainant's reply submissions were filed on March 12, 2026, three days after their March 9, 2026 due date. It does not suggest that the Complainant was medically incapacitated at any point in the period between August 19, 2025 and February 9, 2026 such that she was prevented from filing a timely complaint. In other words, there is no information before the Board that the Complainant's delay was due to extenuating circumstances.

[46] Finally, the apparent strength of the Complaint is extremely low. This too supports the exercise of the Board's discretion not to accept a late complaint.

[47] The law surrounding the duty of fair representation is well established. The Board's role is to examine and decide whether the union represented the employee fairly – that is without discrimination, arbitrariness, bad faith, or serious negligence: *Reid v United Steelworkers of America Local Union No. 7226*, [2000] Alta. L.R.B.R. LD-064 ("*Reid*"). In *Reid*, the Board summarized the key principles underlying the duty of fair representation (at para. 3) as follows:

- **The Union need not take every grievance to arbitration. It need not take a grievance to arbitration just because the grievor asks the Union to do so. The Union is entitled to assess the merits of the grievance, the chances of success at arbitration, the costs of the arbitration process and other factors when deciding whether or not to advance a grievance to arbitration.**
- The Board focuses its examination on the Union's conduct and considerations while the Union represented the employee and in making its decision, rather than on the merits of the grievance, which is the question an arbitrator would answer.
- The Union is entitled to make a wrong decision, as long as it fairly and reasonably investigates the grievance and comes to an informed decision.
- The Union must give the employee a fair opportunity to present the employee's own case to the Union and to provide input on the results of the Union's investigation.
- **The Union should communicate fairly with the employee about all aspects of its representation. Communication with the employee can play a significant role in representation, but the Union need not take direction from the employee or answer all questions to the employee's satisfaction, nor must it act within the employee's time limits.**

- A Union does not breach its duty of fair representation just because it reaches a conclusion with which the employee does not agree. [Emphasis added]

[48] *Information Bulletin #18 – Duty of Fair Representation* (“*Bulletin #18*”) further discusses a union’s obligations under section 153 of the *Code* as well as the union’s discretion in the handling of grievances (at p.2):

...unions have a large amount of discretion when they deal with grievances. For example, unions may settle or drop grievances even if the affected employee disagrees. To counterbalance this power, the *Labour Relations Code* requires unions to fairly treat all members of a bargaining unit. This duty of fair representation requires unions to exercise this power in good faith. This usually means unions must carefully examine grievances. The union must also consider the significance of the case and its consequences for the union and the employee. The representation by the union must be fair, genuine and not merely apparent. The union must act with integrity and competence as well as without serious or major negligence. The union must act without hostility towards the employee. This also means the union’s decision must not be arbitrary, capricious, discriminatory or wrongful. [Emphasis added]

[49] Commenting on a union’s obligation not to be arbitrary, *Bulletin #18* provides (at p. 4):

In deciding whether or not to pursue a grievance, a union must avoid arbitrary, capricious, discriminatory or wrongful conduct. It must not act in bad faith.

It is arbitrary to give only superficial attention to the facts or matters in issue. It is arbitrary to decide without concern for the employee’s needs and interests....

It is arbitrary not to investigate.

It is arbitrary to make no effort to discover the circumstances surrounding a grievance. It is arbitrary to fail to assess the merits of an employee’s grievance.

A union should thoroughly investigate all of the facts and evaluate the probable outcome of arbitration before deciding to abandon or settle a grievance. This includes a review of the merits of the grievance and of arbitration decisions for similar grievances. This becomes more important where an employee faces serious discipline or dismissal, particularly a senior employee.

Union officials can make honest mistakes. Proof that a union has acted negligently in the handling of a grievance or complaint does not necessarily amount to arbitrary conduct. A union can also wrongly assess a grievance, yet not act arbitrarily.

The Board will uphold the union’s decision if it concludes that the union:

- **investigated the grievance and obtained full details of the case, including the employee’s side of the story;**
- **put its mind to the merits of the claim; and**
- **made a reasoned judgment about the disposition of the grievance.**

A union can fulfill its duty by taking a reasonable view of the grievance. This means it must consider all of the facts surrounding the grievance. It must weigh the conflicting interests of the union and the employee. It should then make a thoughtful judgment about the grievance. [Emphasis added]

[50] Returning to the Complaint, the information before the Board is that the Union communicated with the Complainant (via Mabbott) in a respectful, timely, and professional manner. This is worth mentioning because Mabbott's correspondence was frequently antagonistic (towards both the Union and the Employer) and unhelpful. He continued to communicate directly with the Employer in circumstances where it likely was not to the Complainant's benefit and after the Union asked him not to. He provided incorrect and irrelevant case citations. He inserted himself between the Complainant and the Union during the Union's investigation in a manner that may not have been to her benefit. Notwithstanding this conduct, the Union continued to correspond with Mabbott in an effort to gather the relevant information to fairly represent the Complainant. The Union answered Mabbott's procedural questions promptly and clearly. There is no suggestion that the Union's conduct was discriminatory or in bad faith.

[51] Mabbott appears to argue that the Union's assessment of the merits of the Grievance was arbitrary and/or seriously negligent. The Board does not agree. The uncontradicted evidence is that the Union promptly investigated the Grievance by requesting the information that the Employer relied upon to support its decision. The Union also obtained the Complainant's side of the story via the consolidated statement produced by Mabbott. The Union then obtained the Legal Opinion which considered the available evidence in the context of the legal issues identified by the Union as well as by Mabbott.

[52] It is clear from Mabbott's correspondence that he disagrees with the Union's assessment. He essentially suggests that the Employer ought to have provided the Complainant with more rigorous training and supervision and that the Employer's failure to do so was the cause of the Complainant's misconduct. Similarly, Mabbott argues that the Union failed to consider the fact that other, male employees have received different discipline for the same misconduct. The information before the Board is that the Union did consider these arguments and simply came to a different conclusion.

[53] A union does not breach its duty of fair representation simply because it comes to a conclusion with which the employee does not agree, or which may ultimately be incorrect. The question for the Board, at this preliminary stage, is whether there is an arguable case that the union's decision was arbitrary, discriminatory, in bad faith, or seriously negligent: *Reid, supra*.

[54] Here, the uncontradicted information before the Board is that the Union obtained the Complainant's consolidated statement and assessed her information, along with the information provided by the Employer, in the Legal Opinion. The Union noted that the Employer provided evidence of extensive training; including vehicle / driving related training. The information provided in support of the allegations of discrimination essentially consisted of the assertion that a male foreman caused vehicle damage which was attributed to mechanical failure and which resulted in no discipline. Plainly, vehicle damage arising out of a mechanical failure is not the same circumstance as the incident leading to the Complainant's termination.

[55] Given the above, the strength of the Complaint is extremely low. The information before the Board does not support an arguable case that the Union's assessment of the merits of the Grievance was arbitrary or seriously negligent.

[56] In sum, the Complainant (or at least Mabbott on her behalf) was well aware of the obligation to file the Complaint within 90 days of the Union's decision to withdraw the Grievance. She failed to do so. The Union bears no responsibility for this delay and there is no information before the Board that other extenuating circumstances prevented the Complainant from filing a timely complaint. Finally, the Complaint has an extremely low likelihood of success. In these circumstances, the Board considers it appropriate to exercise its discretion to refuse a late complaint pursuant to section 16(2) of the *Code*.

Conclusion

[57] For the reasons set out above, the Board finds that the Complaint is untimely. The Complaint is dismissed in accordance with section 16(2) of the *Code*.

Karen Scott, Vice Chair