

Supreme Court holds labour arbitrator has exclusive jurisdiction over alleged human rights infringement arising from unionized workplace

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On October 22, 2021, the Supreme Court of Canada released its decision in *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 [*Horrocks*]. The issue before the Court was whether a labour arbitrator had exclusive jurisdiction over an alleged infringement of *The Human Rights Code* in Manitoba (the “Code”), which arose from a unionized workplace. Justice Brown, writing for a majority of the Court, held that while the *Code* vests broad jurisdiction in the Manitoba Human Rights Commission (the “Commission”) to receive, investigate and refer human rights complaints to adjudication where appropriate, nothing in the *Code* displaced the exclusive jurisdiction of a labour arbitrator to resolve all disputes arising from the collective agreement under *The Labour Relations Act* (the “LRA”).



Linda Horrocks was a unionized employee of the appellant, Northern Regional Health Authority (“NRHA”). She had previously been suspended for attending work under the influence of alcohol. Ms. Horrocks then entered into a “last chance agreement” with the NRHA, which required her to abstain from alcohol and participate in addiction treatment. She was subsequently terminated by the NRHA for an alleged breach of those terms.

Ms. Horrocks’ union did not grieve her termination. Instead, Ms. Horrocks filed a complaint with the Commission alleging that the NRHA failed to reasonably accommodate her disability. The matter was referred to the Chief Adjudicator for determination, but the NRHA objected, arguing that the dispute fell within the exclusive jurisdiction of a labour arbitrator under its collective agreement.

Ultimately, the Supreme Court agreed.

Following its previous decision in *Weber v Ontario Hydro*, [1995] 2 SCR 929, the Court set out

a two-part test to be applied when resolving jurisdictional issues between labour arbitrators and competing statutory tribunals, such as human rights adjudicators:

- First, the relevant legislative regimes must be examined to determine whether a labour arbitrator has exclusive jurisdiction and, if so, over what matters. At this stage, the Court noted that labour relations legislation in Canada often contains a mandatory dispute resolution clause. These clauses will ordinarily grant exclusive jurisdiction to an arbitrator (or other agreed upon decision-maker) to decide all matters arising from the interpretation, application or violation of a collective agreement, subject only to a clearly expressed legislative intent to the contrary.
- Second, if the legislative regime grants an arbitrator exclusive jurisdiction over all matters arising out of a collective agreement, then the essential character of the dispute must be examined to determine whether it falls within that jurisdiction. At this stage, it is the *factual* nature of the dispute, and not how the dispute is *legally* characterized, that matters.

Applying the two-part test to Ms. Horrocks' complaint, the Court noted that Manitoba's legislature had included a mandatory dispute resolution clause in s 78 of the *LRA*, which required every collective agreement to include a mechanism to resolve all differences about the meaning, application or violation of the agreement. In this case, the NRHA and Ms. Horrocks' union had selected labour arbitration as that mandatory mechanism.

Meanwhile, under the *Code*, the Court found that the Commission had broad jurisdiction to receive and investigate human rights complaints and may refer those complaints to adjudication. No provision of the *Code*, however, expressly displaced the exclusive jurisdiction of an arbitrator under s 78 of the *LRA*. The Court concluded, therefore, that a labour arbitrator had exclusive jurisdiction over all disputes arising from the meaning, application or violation of the collective agreement.

Turning to the second stage of the test, the Court found that the essential character of Ms. Horrocks' complaint arose squarely from the NRHA's exercise of its rights under, or potential violation of, the collective agreement. Factually, the essence of the complaint was that the NRHA had exercised its management rights under the collective agreement in a manner that was inconsistent with its obligation, both under the agreement and statute, to comply with the *Code*. As such, the dispute fell within the exclusive jurisdiction of a labour arbitrator and was never properly within the Chief Adjudicator's jurisdiction.

Finally, it is also noteworthy that the Court in *Horrocks* declined to revisit one aspect of its recent standard of review decision, *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Court confirmed that because the issue on judicial review involved the jurisdictional lines between two statutory tribunals, the proper standard of review was correctness. In doing so, the Court expressly rejected the argument that the *Vavilov* framework should be modified to increase deference to an administrative decision-maker when it is determining the essential character of the dispute before it.

Following *Horrocks*, parties to collective agreements should expect that workplace disputes

will ordinarily fall within the exclusive jurisdiction of labour arbitrators. While each case will turn on the particular legislative scheme at issue and the factual nature of the dispute in question, it will likely be rare that issues arising in the course of employment will fall outside of the jurisdiction of labour arbitrators given the mandatory dispute resolution clauses that are contained in labour relations legislation across Canada. Further, should a legislature wish to confer jurisdiction on another statutory decision-maker to hear a dispute arising from a unionized workplace, clear and express language will be required to create concurrent jurisdiction.

The article *Supreme Court Holds Labour Arbitrator Has Exclusive Jurisdiction Over Alleged Human Rights Infringement Arising from Unionized Workplace* will be published in the upcoming December 2021 edition of the *Employment and Labour Law Reporter*, a monthly newsletter published by LexisNexis Canada.

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