

LABOUR RELATIONS CODE

BRITISH COLUMBIA
LABOUR RELATIONS BOARD

**DUTY OF FAIR REPRESENTATION COMPLAINT
(SECTION 12(1))**

COMPLAINANT INFORMATION

Michael Nunas
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WHO IS YOUR COMPLAINT AGAINST?

Brewery Winery Distillery Workers Union Local 300
7128 Gilley Avenue, Burnaby B.C. V5J 4X2
Tel. (604) 433-6353 - Fax (604) 434-7333

WHO IS THE EMPLOYER?

Brewers' Distributor Ltd. (B.D.L.)
109 Braid Street,
New Westminster, B.C.
V3L 5T3

WHAT IS YOUR COMPLAINT ABOUT?

My complaint concerns my termination by the Employer notwithstanding I was disabled and in receipt of W.C.B. disability benefits. Attachment 6.16

It is my view the Employer's action is discriminatory to a person with a disability and as such is in contravention of the collective agreement, the B.C. Labour Code, as well as the B.C. Human Rights Act.

Furthermore there is some history to my story that indicates the Employer and/or its parent companies Labatt Breweries and Molson Breweries respectively, have in the past engaged routinely in this type of egregious denial of a disabled worker's basic rights, apparently with some acquiescence by Union.

Personal History

In fact, I speak from personal experience having been terminated by Labatt in 1994 while I was injured and disabled as a result of a May 1992 motor vehicle accident I suffered in which I was hit head-on and thrown from the motorcycle I was riding. Attachment 6.13

Then in June 1993, I sustained further injuries in a M.V.A. that impacted further on the injuries I had sustained in the 1992 motorcycle accident. Attachment 6.13

Throughout the first two years of my disability, my disability benefits were interrupted numerous times (and payment delayed up to 7 months on one occasion) by Labatt's former insurance carrier, Confederation Life.

That task of determining my eligibility for the disability benefits as provided by the collective agreement (i.e. during the first 104 weeks of continuous disability) had been wrongly delegated by Labatt to its insurer.

I know this to be true because in the case of another disabled Labatt employee named Nicholas Hughes, the foregoing was determined by Arbitrator Colin Taylor Q.C. at page 13, paragraph 3 of his award issued December 9, 1999. Attachment 1.8

Thus in May 1994, at or about the 102nd week of continuous disability, my benefits were once again interrupted by the insurer, notwithstanding I was still disabled and had provided medical proof of same. Attachment 6.13

The following month (June/94) Confederation Life filed for bankruptcy.

In August/94 Confederation Life was in liquidation at which time its entire Group Claims (Canada) was purchased and taken over by Manulife Financial. Attachment 6.0

I was later to learn from a letter to my solicitor dated January 22, 1996 that under the terms of its agreement with Confederation Life, "*Manulife Financial assume(d) no liability for LTD claims incurred prior to Manulife's takeover of the Group Policies.*" Attachment 6.2

This effectively left me without coverage as provided by the collective agreement, and hence no where to turn for assistance but to my Union.

Unfortunately the Union, as I was also later to learn, had not had any discussions with Labatt concerning the matter of employees such as me, who were in receipt of LTD benefits incurred prior to Manulife's take-over. Attachment 6.8

However, as indicated in its letter to my solicitor dated May 31, 1996, the Union did have an oral assurance that "*the Manulife takeover would result in no interruption in coverage for eligible employees,*" such as me. Attachment 6.8

At all material times the Union was entrusted with securing my collective bargaining rights and was active in its representation of me with Labatt.

Then later that year, on December 22, 1994 Labatt terminated my employment notwithstanding I was still disabled and had provided proof of my continued disability. Attachment 6.1

The Union filed a grievance on my behalf for unjust termination January 26, 1995. Attachment 6.13

I was later advised in a letter dated February 11, 1999, from the Union's president Gerry Bergunder (now Local 300's Business Agent) that on February 16, 1995 David Reinboth (Labatt's former Human Resources Manager and the man responsible for my termination) had denied my grievance on the basis "*the company had no reasonable belief that (I) would ever be able to return to work*" presumably as a result of my disabledness. Attachment 6.13

The Union continued its purported representation of me, later suggesting to me I retain my own counsel, presumably to sue the insurance carrier.

In September 1995 I retained Wayne F. Guinn Esq. to handle my divorce and with his arrival on the scene, the Union then began to effectively abandon my cause, apparently in favour of a junior employee, the aforementioned Nicholas Hughes. Attachment 6.9

(The Board should take note that Mr. Hughes, upon learning of my mistreatment by Labatt and the subsequent abandonment of me by the Union, has remained a steadfast and vocal advocate for me throughout the past 8 1/2 years. He has on more than one occasion put himself at risk in invoking the wrath of our Union, which obviously takes no pleasure in being reminded incessantly by Mr. Hughes of its absolute failure to protect me from the injustice imposed on me by Labatt. I consider Mr. Hughes to be a stalwart friend and his assistance in preparing this complaint has been invaluable to me.)

The Union's Abandonment of Me

Following the receipt of Manulife's letter to my solicitor on January 22, 1996, above, Mr. Guinn began a discourse with the Union to ascertain my rights and the Union's obligations to me.

In a letter to the Union's legal representatives Victory Square Law Office dated March 14, 1996, Mr. Guinn noted that "*dealing with...the union...is like spinning one's wheels.*" Attachment 6.4

At that time Mr. Guinn sought to arrange a meeting with Victory Square Law Office and with the Union's Business Agent and President, Rick Sutherland and Tom Smith, respectively.

A meeting was arranged for April 23, 1996.

However, Rick Sutherland was able to duck that meeting by dispatching a Victory Square lawyer named Marni MacLeod to Mr. Guinn's office. According to Mr. Guinn, Ms. MacLeod arrived at his office unaccompanied by Mr. Sutherland on April 22nd, the day before for which the meeting was actually scheduled. Attachment 6.5

What is most disturbing to me regards this impromptu meeting with my lawyer is that while Ms. MacLeod was busy dismissing and denying to Mr. Guinn the feasibility of a grievance for my unpaid disability benefits, in reality the Union had already acquired and examined the Manulife policies in detail and was quite aware of the existence of discrepancies between the respective disability definitions found in the policies and the collective agreement, signifying the matter was likely arbitrable.

But as evidenced by his letter to me dated April 22, 1996, Ms. MacLeod was apparently able to convince Mr. Guinn "*there is no question that, after a certain number of weeks where an employee is off work for whatever reason, the (Employer) is at liberty to terminate that person's employment pursuant to the Collective Agreement.*" (emphasis added) Attachment 6.5

It is notable that in the case of Nicholas Hughes and noted at page 4, paragraph 1 of Arbitrator Taylor's "Original" award, Labatt was in agreement with the Union regards Hughes' termination, "*that this action was impermissible if the Grievor was unable to work due to a disability.*" Attachment 1.10

Mr. Guinn's letter continues noting "*the (Employer) is obligated to hold an insurance policy in full force and effect for you in accordance with the terms of the Collective Agreement. There is no question that was done and your claim is against the insurance company for failure to provide you with coverage*" (emphasis added) Attachment 6.5

No question? I believe the facts in this matter, (again, as determined in the case of Nicholas Hughes by Arbitrator Taylor at page 14, paragraph 3 of his December 9, 1999 award) reveal quite the opposite. Attachment 1.8

In fact, Arbitrator Taylor “conclude(d)“*that the insurance policies do not conform with the collective agreement..”* and furthermore, he stated that “*if the terms of the policies are at variance with the requirements of the collective agreement, then they must yield to the collective agreement.”* (emphasis added) Attachment 1.8

That issue “*as to whether the Manulife policy contains the stipulated benefits and otherwise conforms with the Employer’s obligation under the collective agreement*” was the very basis of the Union’s argument in the preliminary arbitration hearing in February 1997 before Mr. Taylor’s panel in the matter of the denial of weekly indemnity and long-term disability benefits to Nicholas Hughes, and did in fact form the cornerstone of the Union’s successful Section 99 appeal of Mr. Taylor’s “Original” award. Attachment 1.9

It appears from the foregoing that the Union’s legal representatives, under direction from the Union’s Business Agent Rick Sutherland, was deliberately misleading my lawyer in these matters.

It is notable that the matter of precisely when the Union took possession of the Manulife policies would later become an issue that Labatt and the Union would disagree on. The issue arose out of testimony given at Mr. Hughes preliminary hearing and found at *Section V*, pages 27-28 of the “Original” Taylor award. Unfortunately the matter proved to be inconclusive due at least in part to Union president Tom Smith’s faulty memory of events. Attachment 1.10

In later submissions to Mr. Taylor’s arbitration panel, Union lawyer David Blair would repeatedly deny the Union had possessed (and thus had knowledge of the inherent deficiencies found in) the Manulife policies prior to that hearing. Attachments 2.7 and 2.9

A letter to the Union from Victory Square Law Office dated March 21, 1996 (provided to me by Mr. Hughes and attached to this application) plainly shows this to be untrue. Attachment 2.1

In his recent Section 12(1) complaint to the Board Mr. Hughes wrote:

“Notwithstanding Mr. Blair’s assertion to the contrary -i.e. that the Union could not provide Mr. Taylor at the time of the preliminary hearing in February 1997 with those detailed, comparative definitions “due to non-disclosure of the policies by the Employer” -I submit the opposite is true: that the Union had examined the policies in depth and possessed a document detailing and comparing the respective, disability definitions some 11 months prior to the arbitration’s commencement!”

That would certainly coincide with the time-frame in which I allege the Union was actively misleading my lawyer regards the legal avenues open to me, and more importantly, the Union’s role regards same.

Deceit and Denial

Thus it is abundantly clear the Union sought to deceive my lawyer as to the truth of matters regards the Manulife policies and regards its duty and obligations to me.

Incredulously, the Union continued down this slippery slope of deceit even after Mr. Guinn had brought to the Union's attention the matter of Manulife's agreement with Confederation Life regards its non-liability for LTD claims incurred prior to Manulife's takeover of the Labatt contract. I was effectively left with nowhere to turn to secure my disability benefits, and for that I hold Rick Sutherland responsible. Attachment 6.2

Thus the Union continued its abandonment of me despite the certain knowledge that Labatt's assurance to the Union regards its promise of "*no interruption in coverage*" had no factual basis and was, in fact fraudulent. Attachment 6.8

I am advised by Mr. Hughes that Labatt continued to propagate that fraud in its submissions to Arbitrator Taylor and the Board throughout the unresolved arbitration of his grievances.

The Union's abandonment of me culminated on September 16, 1996 when the Labatt grievance committee, having been countenanced to do so by the Union's legal representatives, made a recommendation to the Union's executive board to withdraw my grievance for unjust termination, notwithstanding I was still injured and disabled at that time. Attachment 6.9

The Union did so while continuing to advance the junior Nicholas Hughes' grievances, an act considered by me (and by Mr. Hughes, for that matter) to be discriminatory to me.

Following the Union's abandonment of me, Rick Sutherland, who was adamant the Union could not act for me, told me that all I could do was to wait for the resolution of Mr. Hughes' grievances. In the event Hughes was successful there might be an avenue for the Union to proceed on my behalf.

Given that Mr. Hughes' grievances were never allowed to proceed beyond the preliminary stage, I'm left with the realization that Mr. Sutherland never had any real intentions of ever revisiting my case and was merely using stonewall tactics.

This was undoubtedly to place me in a position whereby I might be denied a Section 12 complaint by the Board on the basis of insufficient timeliness.

Furthermore it has become abundantly clear, that my solicitor and I had surely been duped by Rick Sutherland into believing there was nothing could be done for me, when all the while Mr. Sutherland knew otherwise and yet chose arbitrarily not to act on my behalf.

The Union continued its denial of its duty to me in a letter dated February 11, 1999 from its president Gerry Bergunder (recently elected to the position of Business Agent) in which Mr.

Bergunder stated at page 2, paragraph 3 that *“there is no forum through which the union can proceed.”* Attachment 6.13

Given the discrepancies in the respective disability definitions as already noted herein, the matter was arbitrable, notwithstanding Mr. Bergunder’s assertion to the contrary.

Discrimination and the Union’s Failure to Protect

Mr. Bergunder has been cognizant of the Union’s abandonment of me for more than five years, due at least in part to Mr. Hughes’ bringing these matters to Mr. Bergunder’s attention.

In a meeting with Mr. Bergunder on April 10, 2002, Mr. Hughes and I provided him with sufficient documentary evidence to suggest there was fraudulence on the part of Labatt and Rick Sutherland and Victory Square Law Office.

The Board should take note that to date Mr. Bergunder has done absolutely nothing to remedy the injustice imposed on be by Labatt and by the Union’s former Business Agent, Rick Sutherland and his legal representatives.

To that end it would appear that Mr. Bergunder has abetted and willingly implicated himself in the cover-up of what must surely be seen to be fraudulent, criminal behaviour on the part of Mr. Sutherland.

Now with my latest termination, again while disabled and unable to work, Mr. Bergunder and the Union once again purport to advance my interests. Given its conduct regards the foregoing I am not convinced the Union has sufficient resolve nor the moral authority to advance my interests.

Unfortunately for me, and strictly from a liability standpoint, in reality the Union’s interests more closely parallel those of the Employer’s than mine, particularly when it comes to the termination of a disabled worker. Such action by the Employer constitutes discrimination as defined by the *B.C. Human Rights Act* and is deemed illegal.

In the case of Nicholas Hughes, the Union’s legal representatives, noting that the provision of the collective agreement under which Hughes (like me) was terminated might be discriminatory, offered the following opinion: *“if a discrimination arguement were successful, however, an arbitrator might apportion liability to the Union for agreeing to the discriminatory provision.”*

(emphasis added) Attachment 2.1

Indeed, the Union is further advised it *“may share the blame for the discriminatory aspects of this clause. In addition, any failure to protect (a member) from discrimination may constitute a breach of the Union’s duty of fair representation: Cameron v Teamsters Local 213, BCLRB No. 46/81.”* Attachment 2.1

And therein lies the rub: for at the forefront of the Union’s representation of its disabled

members lies its chief concern for its own blame and liability and its determination to avoid same.

Given that fundamental conflict of interest, a disabled worker's right to fair treatment is egregiously compromised and, indeed, precluded absolutely by the Union's very participation.

And given the Union's previous failure to protect me from this same injustice as noted above, as well as in the case of Mr. Hughes, I am left with no realistic expectation to believe it will do so this time around.

My complaint may appear on the surface to be premature. But when one takes into consideration the lengthy history of mine and Mr. Hughes' mistreatment by this particular employer (i.e. Labatt) coupled with the Union's longstanding and absolute failure to protect us from previous injustices imposed on us, the Board may well come to a different conclusion.

And rightly so.

And given the gravity of the allegations contained herein -in particular concerning the conduct of Rick Sutherland and the Union's former legal representatives Victory Square Law Office in their misrepresentation to my solicitor Mr. Guinn, -I suggest these matters are deserving of the Board's most serious and immediate scrutiny.

The injustice that has been imposed on me over the last decade by the actions of these employers and moreover, my own Union rightly deserves proper exposure and commensurate censure by the Board.

As Mr. Hughes noted at page 28 of his recent Section 12(1) complaint currently before the Board:

"This is all indicative of what must surely be seen as persistent and calculated discriminatory conduct...and as such reflects on and reveals the Union's longstanding and consistently poor track record in providing any protection for its disabled members, notwithstanding its constitutional obligation and duty to do so."

"It remains to be seen if the Union intends to hold B.D.L. responsible for its recent actions regards Mr. Nunas, or merely discard his grievance after a suitably lengthy period of time -as was done to him in 1996, and as I believe the Union has done to me in its abandonment of my grievances."

"It appears likely the Employer's brazen acts of discriminatory treatment of disabled employees may continue ad infinitum, as long as it can continue to rely on the Union to allow such conduct to go unchecked."

“The question here of course, is will the Board allow this discriminatory and illegal conduct to continue with such impunity or put a stop to it, finally?”

I concur wholeheartedly with Mr. Hughes’ insightful statements and implore the Board to do likewise.

Terminated while Disabled

As to my current situation, I continue to experience severe pain and discomfort as a result of a ruptured hernia that has so far required two surgeries and may well indeed require a third due wholly to complications arising from the initial surgery.

Furthermore I am rightly suspicious that the Employer’s termination of me (as was the case for Mr. Hughes in his lawsuit against Manulife Financial) has only served to complicate and exacerbate matters regards my claim with the Worker’s Compensation Board. Attachment 6.16

Furthermore, I would suggest to the Board that the conflict of interest that undoubtedly exists regards the Union’s ability to represent me unencumbered by its own self-interest, is not of my making. That conflict, or conundrum if you prefer, is one of the Union’s own making.

Thus, like Mr. Hughes I remain a pawn in these matters, and easily expendable.

It is up to the Board, however, to determine if I am to be, as Nicholas Hughes described himself in his recent Section 12(1) application, *“a sacrificial lamb”* to the Unions’ cover-up of its own scurrilous conduct.

Again, given the extraordinary preponderance of evidence suggesting fraudulent conduct on the part of the Union, I implore the Board to grant me some latitude and due consideration in its approval of this application.

HOW DID THE TRADE UNION'S ACTIONS VIOLATE SECTION 12(1)?

The Union has long acted in a consistently arbitrary and discriminatory manner in addition to acting in bad faith as demonstrated by its denial to my lawyer and to me that there existed an avenue in which the Union could have proceeded on my behalf regards my termination by my former employer, Labatt Breweries. Attachment 6.5

The bad faith first exemplified in its fraudulent misrepresentation to my solicitor in 1996 has extended and continued to the present with the Union’s continued denial to me that there was *“no forum through which the Union (could) proceed.”* Attachment 6.13

That was not true in 1996, nor in 1999, nor is it true today. Moreover, the Union knew then and knows to date its denial to me was untrue.

The Union's longstanding and continued denial to me of the truth of these matters is a matter for great concern and as such ought to be given proper scrutiny by the Board.

As noted herein I have once again been terminated by an Employer (B.D.L.) while disabled and unable to work. Attachment 6.15

Given the Union's arbitrary decision to deny me any representation regards my termination by my former employer, Labatt in 1994 (I reiterate while injured and disabled and presenting medical proof of same), the bad faith exemplified by the Union's past misrepresentation of me to my lawyer in 1996 and its longstanding and continued cover-up of same, in addition to its failure to ensure Labatt provided me with an insurance carrier following the demise of Confederation Life, as well as its discriminatory advancing of the interests of a junior employee (i.e. Nicholas Hughes) while literally abandoning me, it follows that the Union's interests regards my current predicament must once again lie in opposition to my own.

Effect of the Hughes Arbitration Awards

Given the Union's representation of Nicholas Hughes produced two arbitration awards, it follows that Arbitrator Taylor's and the Board's decisions in the Hughes arbitration likely have some bearing and effect on the matters at hand.

However I am troubled that the Union, in the case of Mr. Hughes, may have entered into an agreement with Labatt that effectively precluded it from referring to and/or relying on those important past decisions in other arbitrations, such as mine?

The Union's newly-elected Business Agent, Gerry Bergunder has recently denied to me that such an agreement exists. I however remain skeptical and unconvinced.

For notwithstanding Mr. Bergunder's denial above, it is known to me that in the case of Nicholas Hughes the Union was actively pursuing such an agreement, in effect nullifying Arbitrator Taylor's second award for the purpose of future arbitrations the Union might involve itself in.

Attachments 2.13, 2.14 and 2.15

And despite a rumoured settlement of the Hughes grievances, to the best of my knowledge the Union has yet to produce the settlement agreement nor its terms and conditions -this despite a request by Mr. Hughes to do so, and an agreement that I was a witness to by Gerry Bergunder to provide Mr. Hughes with same.

If such an agreement between the parties does exist, then it follows that Mr. Bergunder's denial to me of same would be highly indicative of further bad faith on his and the Union's part.

With that in mind, I ask that the Board compel the Union to disclose in full its settlement with Labatt regards Mr. Hughes' grievances, so that the validity of Mr. Bergunder's statements to me regards same may be properly determined by the Board.

“Blacklisted...because of the Labatt situation”

Insofar as this application is concerned primarily with my recent termination by B.D.L., I think a word or two about the atypical circumstances that led to my employment by the Employer is appropriate at this point:

In 1997, after having recovered sufficiently from my multiple motor vehicle accidents to attempt a return to work, I found it increasingly difficult to secure employment in the brewing industry that I had been a part of since 1980.

It is a fact I was turned down for employment by B.D.L. that year and again in 1998 and had come to the realization that I was on some kind of blacklist, presumably as a result of my motorcycle accident, the injuries I sustained, and the denial of my disability benefits resulting in my termination by Labatt in 1994. Attachments 6.10 and 6.14

That assessment was in fact confirmed for me by Gerry Bergunder in a letter to me dated February 11, 1999. Mr. Bergunder’s letter was in response to complaints made by me to the Union’s Regional Executive Board on October 15, 1998. Attachment 6.13

In Mr. Bergunder’s conclusion to this letter to me he stated at page 2, paragraph 5: *“Finally, I do agree that because of the Labatt situation, the industry appears to have “blacklisted” you,”* and made a *“..commit(ment) to (me)...to correct this injustice.”* Attachment 6.13

This then resulted in my eventual hiring by B.D.L. in July, 1999.

My hiring by the Employer was conditional, requiring the Union’s and my agreement to terms even more stringent (and hence discriminatory) than those routinely afforded even a “permit card” new employee with absolutely no experience in the industry. Attachments 6.14 and 6.17

Among those conditions imposed on me was *“a one (1) year probationary period”* as opposed to the regular 45 day *“job familiarization”* period normally reserved for Union members pursuant to *Article 3.08 (a)* of the B.D.L. collective agreement. Attachment 6.17

Of particular note to the Board is the content of paragraph 4, page 1 which states in whole:

“Our information indicates that Mr. Nunas was terminated for non-culpable absenteeism from his last “industry employer” - our shareholder (i.e. Labatt). In other words, Mr. Nunas had an unacceptable attendance record. It goes without saying that Brewers’ Distributor Ltd. has never been interested in hiring anyone who has had unacceptable absenteeism rate. This is fair and reasonable.” (emphasis added) Attachment 6.14

‘This is fair and reasonable ?’, this *“information”* that B.D.L. had received from its co-owner, Labatt on my behalf ?

This is absurd.

That is unless, my former employer, Labatt had somehow failed to fully explain the mitigating circumstances of my “*unacceptable absenteeism rate*”: i.e. as a result of an horrendous 1992 motorcycle accident I was the victim of, in which I sustained numerous injuries to my head, neck, and spine, when after being hit head-on by a pick-up truck, I was thrown from my bike.

As noted herein, I had sustained even further injuries in a second M.V.A., on June 14, 1993, that impacted adversely on my previous injuries. I suffered excruciating pain, as well as financial calamity, creating great emotional distress which led to the eventual dissolution of my marriage.

Coincidentally, I was experiencing enormous difficulties dealing with Labatt’s insurance carrier, the now-defunct Confederation Life.

At the time of my termination by Labatt at Christmas 1994, I had been continuously disabled and unable to work for more than two and one half (2.5) years.

Unfortunately, David Reinboth, Human Resources Manager for Labatt showed little regard for my disability and terminated me, in accordance with Labatt’s mid-nineties downsizing initiative.

In Gerry Bergunder’s letter to me dated February 11, 1999, at page 1, paragraph 9 he notes that on:

“February 24th/95, David Reinboth, Human Resource Manager for Labatts (sic) denied the grievance stating that the company had no reasonable belief that (I) would ever be able to return to work,” presumably as a result of the disabling injuries I had sustained in my M.V.A.s.

(emphasis added) Attachment 6.13

It would appear from the foregoing that my former employer, Labatt had reason to believe I was disabled. And obviously the Union, too was cognizant of my disability.

Coercion by the Union

The Board should take note that a further condition was imposed by Rick Sutherland prior to his going to bat for me to secure my employment with the Employer: it was suggested to me by Mr. Sutherland that I disassociate myself from Nicholas Hughes, who had accompanied me to the Union’s Regional Board meeting the previous October, and was proving to be an outspoken adherent for me regards the mistreatment I had suffered at the hands of Labatt, and moreover, the Union’s failure to protect me from same.

I saw this plainly as an attempt by Mr. Sutherland to coerce me into repudiating my alliance with Mr. Hughes. Clearly any expectation of support from the Union to attain employment in the brewing industry was to be contingent upon my avoidance of further contact with Hughes.

In fact I recall that on the day of my interview for employment by B.D.L. in July, 1999, I was later chastised at the Union's office by Mr. Sutherland, to whom it had been reported that I had been "*seen with Nick Hughes*", as Mr. Sutherland put it.

To my mind the foregoing was, for lack of a better term, a threat by Mr. Sutherland that any such further alliance with Mr. Hughes could (and would) likely result in grave consequences for me regards any employment opportunities provided by the Union.

Needless to say, I played along with Mr. Sutherland as I was absolutely desperate for work, but privately I alerted Mr. Hughes to the coercion and intimidation I had been subjected to by Rick Sutherland.

Notwithstanding Mr. Sutherland's futile attempts to unduly exert his influence over me, presumably in order to effectively isolate and neutralize Mr. Hughes, it must be stated that Hughes is the only member of my Union to ever stand up on my behalf, to declare time and time again that the treatment afforded me by Labatt was, and rightly should be, unacceptable to a union that takes seriously its duty to protect the rights of its most vulnerable members.

I've witnessed Rick Sutherland's use of profanity to Mr. Hughes as Mr. Sutherland stalked out of the Union's Regional Board meeting in October 1998, unwilling to show any accountability to me or to Mr. Hughes for the Union's actions regards our respective complaints.

I've witnessed Hughes' ejection by Gerry Bergunder from a Union meeting on April 13, 2002, essentially for asking pertinent questions for which the Union has no answers to, that concern its conduct regards the arbitration of his grievances, while giving little if any consideration to mine.

It is only through Nicholas Hughes' due diligence in uncovering the truth of matters regards what was done to me by Labatt in 1994 and by Rick Sutherland in his capacity as the Union's Business Agent, that I am able to make this application.

Without Mr. Hughes' determination to right these wrongs and to hold those responsible to account for their actions (and in the case of the Union, its gross inaction) these matters would have long been forgotten, swept under the carpet with a disturbing casualness.

Mr. Hughes has shown the courage of his convictions with a boldness that demonstrates little regard for his own well-being.

There is no question in my mind that Mr. Hughes will never be permitted to work in the brewing industry ever again, due solely to the many 'feathers' he has ruffled while attempting to attain some measure of justice for me and indeed for all injured, disabled members of our union.

And for that I will remain eternally grateful to him. His efforts to bring these matters to light

should be rightly commended by the Board and by the labour community at large.

In his recent Section 12(1) complaint to the Board, Hughes wrote concerning “*the Labatt situation*”(a phrase coined by Gerry Bergunder in the conclusion to his February 11,1999 letter to me): Attachment 6.13

“The seriousness of “the Labatt situation” cannot be understated.

“Nor can the enormity of the Union’s repeated and longstanding abandonment of its obligation and duty to protect its weakest and most vulnerable members from discriminatory and unfair treatment at the hands of an unscrupulous employer.”

I concur with Mr. Hughes’ statements and urge the Board to do likewise.

Clean Hands vs A Fraudulent Representation

Perhaps the most striking thing in all of the foregoing -even more so than the total lack of accountability shown by Labatt and its former Business Agent, Rick Sutherland -is that the only parties to suffer any penalty throughout all of this is Mr. Hughes and me.

And yet we’re the only ones who can actually claim to have clean hands, in a truly legal sense.

Not Labatt -who was shown to be in breach of numerous provisions of the collective agreement, as well as in its administration of weekly indemnity and ‘soft’ long-term disability benefits as determined by Arbitrator Taylor’s second majority decision. Attachment 1.8

And in my case, the evidence before the Board indicates Labatt contracted an insurance policy from Manulife Financial that provided no liability and hence no coverage for me. Attachment 6.2

Certainly not the Union, as exemplified by the conduct of Rick Sutherland and lawyers Marni MacLeod and David Blair of Victory Square Law Office.

The Board should take note I am fully aware of the allegations of impropriety regards David Blair in the Union’s representation of Nicholas Hughes and cited in Mr. Hughes’ Section 12(1) application, currently before the Board.

My understanding of these matters from discussions with Mr. Hughes is that in February 1997, in the matter of Hughes’ grievances, David Blair failed to provide Arbitrator Taylor with a document Victory Square Law Office had in its possession -a detailed comparative list of the relevant disability definition discrepancies as found in the Manulife policies and the Labatt collective agreement -a document that proved conclusively that which Mr. Blair was purportedly endeavouring to prove : i.e. the actual existence of the discrepancies in the respective documents.

In later submissions to Arbitrator Taylor, David Blair would repeatedly deny having such a list in his possession at the time of Hughes' arbitration hearing "*due to non-disclosure of the policies*" by the Employer prior to the arbitration, and furthermore, Arbitrator Taylor himself took note of Mr. Blair's omission and cited it as the compelling reason for Mr. Taylor's inability to make a conclusive finding in his first award. Attachments 2.7 and 2.9

Notwithstanding Mr. Blair's attempt to convince Arbitrator Taylor that the Union hadn't taken possession of the Manulife policies, Mr. Hughes has shown me proof otherwise in the form of an attached "*Appendix B,*" to a letter from Victory Square Law Office to Rick Sutherland, dated March 21/96, and provided to Mr. Hughes by Rick Sutherland. Attachment 2.1

The letter clearly indicates the law firm had "*examined the policies*" and was now, officially advising the Union as to the merits of -and possible pitfalls involved in the handling of Hughes' grievances. Attachment 2.1

Hughes has in fact shown me the copy of the Manulife policy that Rick provided for him, clearly dated February 4, 1996. It is reasonable to assume that Rick Sutherland at that time likely provided his legal representatives at Victory Square Law Office with their own copy -to examine and make comparisons with the disability definitions found in the Labatt collective agreement. Well, didn't he ? Attachment 3.6

The matter of Union lawyer Marni MacLeod's impromptu visit to my lawyer Wayne Guinn, and her indicating to him the matters of my unpaid long-term disability benefits and my subsequent unjust termination while disabled by Labatt were inarbitrable, is deeply disturbing to me.

Concurrently to my solicitor Wayne Guinn's attempts to ascertain my rights, collective bargaining and otherwise, by March 21, 1996, the Union was in receipt of and had examined the Manulife policies as evidenced by Victory Square Law Office's letter to Rick Sutherland, above.

Attachment 2.1

So the Union was not only cognizant of the existence of the discrepancies in the respective disability definitions up to and beyond the first 104 weeks of disability but, as a result of the existence of those discrepancies, was aware the matter of the denial of my disability benefits was arbitrable.

And yet it appears from the content of Mr. Guinn's letter to me dated April 22, 1996 that Ms. MacLeod was advising him of something quite different. Attachment 6.5

The Board will undoubtedly come to the logical conclusion that Ms. MacLeod was directed by her client Rick Sutherland to provide Mr. Guinn with her misleading advisements.

What other possible reason could she have had for making such a gross misrepresentation to Mr. Guinn?

That is a question (among many) that deserves an answer from Rick Sutherland and the Union.

I respectfully ask that the Board provide me with an opportunity to ascertain the truth of these most serious matters, in granting this application.

REMEDIES

The remedies I seek are as follows (but not limited to):

1. A detailed, reasoned and written response by the parties named to the numerous allegations herein.
2. An oral hearing before the Board to hear evidence and witness testimony to determine the merits of this application.
3. Full disclosure by the Union of all documents in its possession, agreements, etc. made with my former employers Labatt/B.D.L. pertaining and/or relevant to mine and Nicholas Hughes' grievances. Included here of course, is the Union's recent, alleged agreed settlement with Labatt of Hughes' grievances: specifically as to the terms of their agreement, and the ramifications the agreement holds for other Union member's grievances, such as mine.
4. An order by the Board for the resumption and completion of an arbitration into the matter of my unpaid disability benefits and unjust termination, respectively, costs to be borne by the Union.
5. A granting to me of Intervener Status in all matters pertaining to mine and Hughes' grievances.
6. Permission to retain independent legal counsel for any and all proceedings pertaining to my complaints, the costs and fees for which are to be borne by the Union.
7. A declaration by the Board that there existed an inconsistency between the respective disability tests found in the Manulife policies and the collective agreement, for the period up to and beyond 104 weeks of disability, and that the Union was cognizant of the existence of those discrepancies, notwithstanding David Blair's misleading submissions to Arbitrator Taylor.
8. Aggravated, special, and punitive and exemplary damages as deemed appropriate. In other cases the same principles have been expressed: see *Warner v. Arsenault* (1982), 53 N.S.R. (2d) 146 (N.S.S.C.A.D.), where Pace J.A., speaking for the court, made the following statements in respect of the circumstances which will permit the awarding of punitive damages, at p. 152:

“Exemplary or punitive damages may be awarded where the...conduct is such as to merit punishment. This may be exemplified by malice, fraud or cruelty as well as other abusive and insolent acts towards the victim. The purpose of the award is to vindicate the strength of the law and to demonstrate to the offender that the law will not tolerate conduct which wilfully disregards the rights of others.” (emphasis added)

9. An indepth examination and inquiry by the Board to determine Labatt’s and the Union’s conduct regards the Nunas/Hughes debacle and their attempts to conceal the facts concerning our respective, unlawful terminations.

10. Such other relief deemed just by this Board.

HAVE YOU SOUGHT ASSISTANCE FROM ANY OTHER AGENCY IN THIS MATTER?

No.

However, it may be necessary to file a complaint with the B.C. Human Rights Tribunal depending on the outcome of this application.

As well, a complaint to the Law Society regards the allegation concerning Marni MacLeod’s misleading my solicitor in 1996 regards the Union’s obligations and duty to me, may yet be forthcoming.

This could well depend on the Board’s decision (or not) to hold the Union and its representative, Marni MacLeod, accountable for the ethical misconduct alleged herein.

It is noteworthy that Ms.MacLeod’s name no longer appears on Victory Square Law Office’s letterhead, and it is assumed she no longer works for that law firm. Her whereabouts are not known to me.

Respectfully,

Michael M. Nunas
Dated January 2, 2004

Mr. Hughes has graciously allowed me to utilise the attachments and list of same filed by him in his recent complaint to the Board (filing date December 9, 2002). Included here is one additional attachment (No. 6.17), Article 3.08 of the B.D.L. collective agreement. Provided here is the complete list of documents which the Board has in its possession and should refer to in the context of this application. January 2/2004

**NUNAS DUTY OF FAIR REPRESENTATION COMPLAINT
SECTION 12(1)**

PART A - THE APPLICATION

PART B - LIST OF ATTACHMENTS

Section 1 - Labour Relations Documents

- 1.0 03.08.5 - Letter to Arbitrator Colin Taylor Q.C. from Nicholas Hughes
- 1.1 03.06.5 - Letter from Arbitrator Colin Taylor Q.C. to Nicholas Hughes
- 1.2 03.05.23 - Letter to Arbitrator Colin Taylor Q.C. from Nicholas Hughes
Application for Intervener and Interested Party Status
- 1.3 03.01.24 - Supreme Court Order (re: Judicial Review of BCLRB
No.B10/2002)
- 1.4 03.01.23 - Praecipe re: Judicial Review of BCLRB No.B10/2002
- 1.5 02.01.11 - Decision BCLRB No.B10/2002 (Employer's Section 141 -
Reconsideration of BCLRB B244/2000)
- 1.6 01.07.19 - Statement of Claim re: Hughes v Labatt Brewing Company Ltd.
- 1.7 00.06.19 - Decision BCLRB No.B244/2000 (Employer's Section 99)
- 1.8 99.12.09 - Arbitration award ("Second" Taylor Award)
- 1.9 99.04.23 - Letter Decision BCLRB No.B149/99 (Union's's Section 99)
- 1.10 97.03.31 - Arbitration award ("Original" Taylor preliminary award)
- 1.11 95.08.31 - Grievance re: Article 3:3 Loss of Seniority
- 1.12 95.08.25 - Letter of Termination from Labatt per David Reinboth
- 1.13 95.07.11 - Grievance re: Article 9 Social Security (Disability Benefits)
- 1.14 95.10.24 - Record of Employment (*"Termination date was 95.07.21"*)

Section 2 - Victory Square Law Office Correspondence, Submissions etc.

- 2.0 96.01.20 - Letter to Nicholas Hughes - first contact with Union's law firm
- 2.1 96.03.21 - Letter to Brewery Workers' Union (Attention Rick Sutherland)
- 2.2 97.04.02 - Letter to Brewery Workers' Union (Attention Rick Sutherland)
- 2.3 97.02.07 - Letter to Nick Hughes (Return of my List of Documents)
- 2.4 98.12.03 - Letter to Brewery Workers' Union (Attention Rick Sutherland)
- 2.5 99.03.01 - Letter to David Blair of Victory Square Law Office
- 2.6 99.03.30 - Letter to Labour Relations Board
- 2.7 99.07.07 - Letter to Arbitration Board (Submissions of the Union following LRB Section 99 decision)
- 2.8 99.10.12 - Letter to Ministry of Development and Economic Security
(re: status of my claim)
- 2.9 99.10.14 - Letter to Arbitration Board (Submissions of the Union in reply)
- 2.10 99.12.13 - Letter to Brewery Workers' Union (Attention Rick Sutherland)
- 2.11 00.08.09 - Letter to Labour Relations Board
- 2.12 00.02.07 - Letter to Brewery Workers' Union (Attention Rick Sutherland)
- 2.13 01.02.14 - Letter to Harris & Co. (re: Union's changes to Minutes of Settlement and Terms of Reference)
- 2.14. 01.03.20 - Letter to Victory Square Law Office from Harris & Co.
- 2.15 01.04.17 - Letter to Brewery Workers' Union (Attention Gerry Bergunder)
(re: settlement proposal)

Section 3 - Hughes' Correspondence

- 3.0 95.03.29 - Medical release authorization (given to Rick Sutherland)
- 3.1 95.05.04 - Letter from Rick Sutherland to Dr.G. Parhar (Hughes' physician)
- 3.2 95.05.15 - Letter to David Reinboth, Labatt Mgr. Human Resources
- 3.3 95.05.19 - Letter to Rick Sutherland (typed copy - original was handwritten)
- 3.4 95.05.24 - Letter from Rick Sutherland
- 3.5 95.06.28 - Letter to Rick Sutherland
- 3.6 96.02.04 - Envelope containing Manulife W.I. policy No.GL and GH 15064 (cover provided) from Brewery Worker's Union
- 3.7 97./???.?? - Cover of Confederation Life L.T.D. policy No.GH15164 sent to Paul B. Seale, solicitor for Nicholas Hughes
- 3.8 97.04.03 - Letter from Rick Sutherland (re: "Original" Taylor preliminary award)
- 3.9 97.04.18 - Letter to Labour Relations Board
- 3.10 97.05.12 - Letter to Rick Sutherland (re: arrangement to limit Jim Dunne's recall rights and its effect regards my wrongful termination)
- 3.11 97.05 23 - Letter to Tom Smith -Local 300 president (see No.12 on page two of the "*Draft Agreed Statement of Facts*" - Attachment 3.10 above)
- 3.12 97.07.01 - Letter to Labour Relations Board
- 3.13 98.09.03 - Letter to Gerry Bergunder (Local 300 president) (Request to appear before Union's Executive Board)
- 3.14 98.10.15 - Four letters to Union's Regional Executive Board (re: Labatt's mistreatment of injured, disabled workers and the Union's conduct regards same - Request for Union's assistance)

- 3.15 98.10.19 - Letter to Gerry Bergunder (re: appearance before Union's R.E.B. - follow-up remarks)
- 3.16 98.10.28 - Letter from Gerry Bergunder (re: submissions to R..E.B.)
- 3.17 98.11.09 - Letter to Gerry Bergunder (re: letter 98.10.28 - request to appear before Union's General Executive Board)
- 3.18 99.07.05 - Letter to Arbitrator Colin Taylor Q.C. (personal submission)
- 3.19 99.07.08 - Letter to David Blair (Victory Square Law Office)
- 3.20 99.11.18 - Letter to Union's General Executive Board (Request for Union's assistance)
- 3.21 99.11.18 - Letter to Union's Regional Executive Board (re: Violations of the Union's Constitution and By-laws by Rick Sutherland - Charges filed)
- 3.22 00.01.17 - Letter from Gerry Bergunder (re: Hughes' news releases "*The Nick Hughes Thing*" and "*Labattgate 2000*")

Section 4 - Hughes' Medical

- 4.0 95.06.07 - Letter from Dr.G.Parhar (Hughes' personal physician) to Rick Sutherland (re: Hughes' inability to work)
- 4.1 96.01.10 - Letter to Dr.G.Hirsch from Nicholas Hughes (re: denial of disability benefits and subsequent termination by Labatt)
- 4.2 02.03.15 - Letter to Dr.G.Parhar from Institute for the Study and Treatment of Pain (therapist's report re: "*muscle spasm*" and chronic pain)
- 4.3 02.06.03 - Letter from Dr.G.Parhar to Paul B. Seale, solicitor to Hughes (Medical/Legal Report re: Hughes' inability to work)

Section 5 - Miscellaneous Documents

- 5.0 97.01.06 - *“The LOWdown on Downsizing”* (news release)
- 5.1 97.01.07 - *“Second ‘Ex-Labatt’ Employee Cries Foul”* (news release)
- 5.2 98.???.?? - *“The Question Is...”* (information pamphlet)
- 5.3 00.01.14 - *‘Labattgate 2000’* (news release)
- 5.4 00.01.17 - *‘The Nick Hughes Thing’* (news release)
- 5.5 ----- - excerpts of Labatt collective agreement April 21/94-April 20/00
- 5.6 ----- - excerpts of Union Constitution and By-laws (Article 4-Section 5)
- 5.7 98.10.15 - excerpts Hughes’ address to Union’s Regional Executive Board
- 5.8 93.04.20 - Labatt plant seniority list pre-downsizing
- 5.9 01.08.22 - Newspaper article with picture of Nick Hughes - The Record
(New Westminster)
- 5.10 00.???.?? - Editorial cartoon modified to resemble Mike Nunas

Section 6 - Documents provided by Michael Nunas

- 6.0 94.08.15 - Winding-up Order (re: Confederation Life Insurance Company)
- 6.1 95.01.09 - Record of Employment (Nunas termination was 94.12.22)
- 6.2 96.01.22 - Letter from Manulife Financial to Wayne F.Guinn, Esq.
(solicitor to Michael Nunas)
- 6.3 96.03.14 - Letter from Wayne F.Guinn to Peat Marwick Thorne Inc.
(re: Confederation Life in Liquidation)
- 6.4 96.03.14 - Letter from Wayne F.Guinn to Victory Square Law Office
Attention: Marnie MacLeod (re: request for meeting with
Victory Square Law Office, Rick Sutherland and Tom Smith)

- 6.5 96.04.22 - Letter from Wayne F.Guinn to Michael Nunas (re: unscheduled meeting with Marnie MacLeod *sans* Rick Sutherland)
- 6.6 96.04.23 - Letter from Victory Square Law Office to Wayne F.Guinn (re: representation of Michael Nunas concerning the “*issues of Mr. Nunas’ termination and the issue of the cessation of his disability benefits*”)
- 6.7 96.04.24 - Letter from Wayne F.Guinn to Victory Square Law Office Attention: Marnie MacLeod (re: “*a search of the Union files to obtain copies of any correspondence...with Manulife regarding Mr. Nunas’ benefits...*”)
- 6.8 96.05.31 - Letter from Victory Square Law Office to Wayne F.Guinn (re: “***the takeover of insurance matters by Manulife Financial... from Confederation Life Insurance Company***” - “***there would be no interruption in coverage***”)
- 6.9 96.09.16 - Letter from Rick Sutherland to Michael Nunas (re: Union’s abandonment of Nunas’ Unjust Termination grievance 95.01.26)
- 6.10 98.05.13 - Letter from Brewers Distributor Ltd. to Mike Nunas (re: Mike Nunas’ job application denial)
- 6.11 98.10.28 - Copy of letter from Gerry Bergunder to Nick Hughes (in reply to Michael Nunas’ complaint of abandonment by the Union)
- 6.12 98.11.11 - Letter from Mike Nunas to Gerry Bergunder (re: Union’s written response to Nunas’ complaints to Union’s Regional Executive Board)
- 6.13 99.02.11 - Letter from Gerry Bergunder to Mike Nunas (re: Nunas’ complaints to Union’s Regional Executive Board - “*blacklisted*”)
- 6.14 99.07.26 - Letter from Brewers Distributor Ltd. to Rick Sutherland (re: Mike Nunas’ Application for Employment - terms and conditions)
- 6.15 03.06.10 - Letter from Brewers Distributor Ltd. to Mike Nunas (re: Mike Nunas’ termination notwithstanding his W.C.B. claim)

6.16 03.07.14 - Grievance complaining of loss of seniority while off work on a
W.C.B claim

6.17 ----- Excerpt from B.D.L. collective agreement - "Job Familiarization"
Article 3.08
