

BRITISH COLUMBIA LABOUR RELATIONS BOARD

AVISCAR INC.

-and-

BUDGETCAR INC.

-and-

AVIS BUDGET CAR RENTAL CANADA, ULC

(the "ULC")

-and-

CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES UNION, LOCAL 378

("MoveUP")

-and-

TEAMSTERS LOCAL UNION NO. 213

("Teamsters")

PANEL: Brett Matthews, Vice-Chair
APPEARANCES: Eleni Kassaris, for Aviscar Inc., Budgetcar
Inc., and the ULC
Allan E. Black, Q.C. and Gall Levit, for
MoveUP
Bryan Savage, for Teamsters

CASE NO.: 2020-000248

DATE OF DECISION: February 25, 2021

DECISION OF THE BOARD

I. **NATURE OF APPLICATION**

1 In *Aviscar Inc.*, 2020 BCLRB 96 (the "*Merits Decision*"), I declared, pursuant to Section 38 of the *Labour Relations Code* (the "*Code*"), that Aviscar Inc. and Budgetcar Inc. (collectively the "*Employer*") constitute one employer for the purposes of the Code.

2 In *Aviscar Inc.*, 2020 BCLRB 127 (the "*Supplemental Decision*"), I made the following supplementary orders:

1. I ordered that the MoveUP certification be amended as follows:

a. The name of the employer will be:

Aviscar Inc. and Budgetcar Inc. Budgetauto Inc. and Avis Budget Car Rental Canada, ULC, operating as Avis Budget Group;

b. The bargaining unit description shall read:

employees at and from 757 Hornby Street, Vancouver, the Vancouver International Airport, Richmond, 3820 and 3840 McDonald Road South, Richmond, and the Victoria International Airport, Sidney, BC, including lead shuttlers and shuttlers at and from the Vancouver International Airport, Richmond, BC; and

2. I ordered that the Teamsters certification be cancelled;

3 Additionally, I directed that representatives of the Employer, MoveUP, and Teamsters meet to discuss, and to attempt to resolve, the integration of the MoveUP Unit and the Teamsters Unit (as those terms are defined in the *Supplemental Decision*) into the Broader Unit (also defined in the *Supplemental Decision*). I retained jurisdiction to make any final order in this regard if the parties were unable to reach agreement.

4 The parties met but were unable to resolve the integration of the MoveUP Unit and the Teamsters Unit into the Broader Unit. Consequently, Teamsters has applied pursuant to my retained jurisdiction to ask that I make final orders in this regard.

5 I find that this application requires a prompt decision and, as such, my reasons will be brief.

II. BACKGROUND AND POSITION OF THE PARTIES

6 The relevant facts are set out at length in the *Merits Decision* and the *Supplemental Decision*.

7 Teamsters ask that I order that the seniority lists pertaining to the Teamsters Unit and the MoveUP Unit be dovetailed, and that the existing collective agreement negotiated between MoveUP and the Employer (the "MoveUP Collective Agreement") apply to all employees in the Broader Unit. It says this is the result mandated by Section 33(8) of the Code. Teamsters say that if the Board allowed two collective agreements – the Move UP Collective Agreement and the agreement negotiated between Teamsters and the Employer (the "Teamsters Collective Agreement") – to continue to operate, it would make a mockery of the Board's policy on dovetailing. Teamsters say it is hard to imagine how two collective agreements could have a single seniority list. Referring to my earlier decisions in this matter, Teamsters explain:

If there are still two collective agreements then the Employer could still hire new employees "in part based on the relative financial obligations in the two collective agreements." Further, if there are still two collective agreements then there is no onus on either of the remaining parties to agree to a single collective agreement . If this is so then the only actual remedy flowing from your decision is that the Teamsters members have lost their right to be represented by the Union of their choice.

8 MoveUP asks that I make a final order confirming that, as a result of the cancellation of Teamsters' certification, Teamsters have no further involvement of any kind in the matters between the Employer and MoveUP in respect of the integration of the two previously existing bargaining units. MoveUP denies that Section 33(8) is dispositive of the situation and instead points to Section 27(1)(a) of the Code which it says results in the Teamsters' Collective Agreement continuing in force, but being administered by MoveUP rather than Teamsters.

9 In response to Teamsters' concerns pertaining to the dovetailing of seniority lists, MoveUP submits as follows:

MoveUP has a clear policy on seniority when there is a merger of bargaining units. This policy was provided to the Employer and the Teamsters. MoveUP obtained the Avis and Budget lists and then dovetailed seniority according to the policy. Both the Employer and the Teamsters agreed to the list that MoveUP prepared. The Employer and MoveUP have agreed to apply the list going forward, while the Teamsters seem to have other ideas, notwithstanding the fact that they no longer represent the employees of the Employer. This should not be allowed to happen.

10 The Employer broadly agrees with the position adopted by MoveUP.

11 The Employer says that the parties have met as directed, but that Teamsters' involvement in discussion about integration have been disruptive. The Employer says that it has an agreement with MoveUP as to how the seniority lists are to be dovetailed:

MoveUP and the Employer have agreed to dovetail the seniority lists but have also agreed to maintain the status quo at the workplace and access the new combined seniority list when it is time to recall employees instead of laying off people that are currently working in order to allow people that are currently on layoff to bump and return to work.

1 The Employer says that it has agreed to maintain the status quo as the least intrusive approach to consolidating the bargaining unit: *BC Rail Ltd.*, BCLRB No. B287/99 and consistent with what it says is the proper application of Section 27 of the Code. The Employer agrees with MoveUP's submissions pertaining to the applicability of Section 27 of the Code.

2 In reply, Teamsters say the submissions made by MoveUP and the Employer clearly show that those parties had no intention of actually attempting to resolve the integration of the MoveUP Unit and the Teamsters Unit into the Boarder Unit. It says that this is a case where Section 71 of the Code is applicable.

3 Teamsters dispute MoveUP's assertion that Section 27(1)(c) applies. It says that the "unit" at issue in Section 27(1)(c) is the Broader Unit, and that the Teamsters Collective Agreement cannot be a collective agreement binding upon the Broader Unit.

4 Responding to the Employer's submission, Teamsters dispute the allegation that its presence in negotiations has been disruptive. Furthermore, Teamsters say it would not be disruptive to allow employees on layoff to exercise their seniority rights, noting that seniority rights are some of the most important rights won by trade unions.

III. ANALYSIS AND DECISION

5 Firstly, I am not satisfied that Section 71 of the Code is applicable to the present matter. I am not satisfied that the facts alleged by Teamsters establish improper conduct on the part of either the Employer or MoveUP such that I should invoke Section 71.

6 Turning then to the central issue before me, I begin by noting that no party has made any application for declaratory or other relief under either Section 33(8) or Section 27(1)(c) of the Code. Rather, my jurisdiction in the present matter is that which I retained pursuant to MoveUP's Section 38 application.

7 Section 38 provides:

If in the board's opinion associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or a

combination of them under common control or direction, the board may treat them as constituting one employer for the purposes of this Code and grant such relief, by way of declaration or otherwise, as the board considers appropriate.

(emphasis added)

8 The Board's discretion to grant remedial relief under Section 38 of the Code is broad and is dependent on the particular circumstances of the case at hand. I am not satisfied that the Board's remedial discretion is constrained by either Sections 33(8) or 27(1)(c).

9 Rather, as set out in the *Supplemental Decision*, I find I should attempt to fashion a remedy which is responsive to the industrial stability concerns raised in the *Merits Decision*, but recognizing that excessive intervention by the Board into the terms and conditions of employment – matters ordinarily negotiated between employers and unions – may have unintended detrimental consequences.

10 My remedial discretion pursuant to Section 38 should be exercised in a manner which encourages the private ordering of affairs as a means to resolve workplace issues. As a result of the *Supplemental Decision*, that private ordering is to occur between the Employer and MoveUP as the exclusive bargaining agent for the Broader Unit. In the interests of industrial stability, the ability of the Employer and MoveUP to adapt to the workplace realities should be constrained as minimally as possible.

11 I also find that, when addressing the industrial stability concerns raised in the *Merits Decision*, I should be looking at the long-term impacts of my remedial decisions. Consequently, even if the remedies I order may not immediately correct the industrial instability concerns I identified in the *Merits Decision*, they may be appropriate if they are likely to lead to longer term industrial stability.

12 With that in mind, and having particular regard to the Employer and MoveUP's commitment that seniority rights under the two collective agreements at issue should ultimately be dovetailed, I make the following orders:

1. I order that the MoveUP Collective Agreement will continue to apply to any employee to whom it applied prior to the Board's issuance of the *Supplemental Decision*, and that, similarly, the Teamsters Collective Agreement will continue to apply to any employee to whom it applied prior to the Board's issuance of the *Supplemental Decision*. If the Employer hires any new employee into the Bargaining Unit, those newly hired employees will work under the MoveUP Collective Agreement, unless the Employer and MoveUP agree differently.
2. I order that each of the MoveUP Collective Agreement and the Teamsters Collective Agreement shall be administered by MoveUP as bargaining agent, and that the rights and obligations that were, prior to the Board's *Supplemental Decision*, conferred or imposed by the Teamsters Collective Agreement on Teamsters, are conferred or imposed on MoveUP. To be clear, that means

Teamsters will play no further role in the administration of any collective agreement pertaining to the Broader Unit and will play no further role in the integration of the two units.

3. I order that the date upon which the MoveUP Collective Agreement expires and the date upon which the Teamsters Collective Agreement expires be synchronized, such that both the MoveUP Collective Agreement and the Teamsters Collective Agreement will expire on the earliest date that either of those collective agreements expire. MoveUP and the Employer will negotiate a single collective agreement to replace both the MoveUP Collective Agreement and the Teamsters Collective Agreement upon their expiry.
4. Nothing in the orders I have made above affects the rights of MoveUP and the Employer to amend, by agreement between them, the terms and conditions which apply to members of the Broader Bargaining Unit, including: the terms and conditions contained in the existing collective agreements (i.e. the MoveUP Collective Agreement and the Teamsters Collective Agreement); the employees or groups of employees to whom the existing collective agreements apply; and the expiration dates of those collective agreements. Similarly, nothing in the orders I have made affects the ability of MoveUP and the Employer to agree to enter into a single collective agreement to replace the existing agreements prior to their expiry.
5. I retain no further jurisdiction in this matter.

LABOUR RELATIONS BOARD

A handwritten signature in black ink, appearing to read 'B. Matthews', followed by a long horizontal line extending to the right.

BRETT MATTHEWS
VICE-CHAIR