

incident in 1990 and an incident in 1992. The plaintiff alleges that in 1990 he was involved in an accident at work where the axle of the front end loader he was operating snapped. The plaintiff left work a half-hour early as a result of the accident without filing an incident report, was reprimanded the next day and, as a result of the reprimand, got involved in a heated argument with his supervisor. This resulted in his requesting an ambulance because of pains he was experiencing. The request for an ambulance was denied and the plaintiff proceeded to a hospital emergency ward, where it was determined the pains resulted from an anxiety attack. He was off work for a period of time as a result. The plaintiff applied for Workers Compensation as a result of this incident.

3. The plaintiff alleges that in 1992 he was shot at while at work and that his supervisor ignored his expression of concern. The plaintiff filed an incident report and advanced a Workers Compensation Board claim. He alleges that the CNR eliminated the file relating to this incident and further tampered with documents.

4. The plaintiff alleges in para 12 that, “under duress” arising from the incidents mentioned and other circumstances set out in the pleadings, he was “denied the right to an honorable working pension, filed numerous appeals to the WCB and Appeal Commission for past claims in an attempt to retain employment with the CNR. The CN police, CN and CN supervisor, hid and or manipulated documents to prevent, delay and cause numerous appeals that take years.”

5. The plaintiff then alleges that he finally recovered documents to confirm the 1992 shooting incident and a previous alleged shooting incident and that “had the CN furnished documents as required, the plaintiff would still be employed with the CNR.”

The plaintiff does include as a fact in the pleadings in para 21 that in 1995 “CN presented plaintiff with \$21,000.00 contract worded vague”. The plaintiff did file affidavit evidence which is relied upon by the defendant which includes the document referred to by this allegation. The document is a release in which the plaintiff, in consideration of the sum of \$21,000.00, “does hereby remise, release and forever discharge the Releasee and its successors and assigns, of and from all actions, causes of actions, claims, demands, damages or court costs of any nature or kind whatsoever and whether in law, equity contract, tort or otherwise, including without limiting the generality of the foregoing, and (*sic*) complaint(s) under the Canada Labour Code, Canadian Human Rights Act or similar legislation which the Releasor and his successors and assigns, ever had, now have, or can, shall or may hereinafter have against the Releasee or its successors and assigns, in respect of or in any way arising out of his employment relationship with the Releasee”.

6. The Releasee is defined in the release as “Canadian National Railway Company, its employees, servants and agents”. This release was signed by the plaintiff on January 31, 1995.

Defendant’s Position

7. The defendant submits that the amended statement of claim discloses no reasonable cause of action known at law. There is no right of action against the defendant with respect to what the Workers Compensation Board may or may not have

decided. If the plaintiff is attempting to advance an action against the defendant with respect to the employment relationship, any action is statute barred since the employment terminated in 1994. In addition, the release which has been put into evidence by the plaintiff prevents the plaintiff from advancing any claim against the defendant arising out of the employment relationship.

8. The defendant relies on certain provisions of the *Workers Compensation Act* R.S.M. 1987 c. W200, including:

12 No action lies for the recovery of compensation under this Part; and all claims for compensation shall be heard and determined by the board.

13(1) The right to compensation provided by this Part is in lieu of all rights and rights of action, statutory or otherwise, to which a worker, or his legal personal representative, or his dependants, are or may be entitled against the employer, for or by reason of personal injury to, or the death of, the worker occasioned by any accident which happens to him arising out of, and in the course of, his employment; and no action in any court of law against the employer in respect thereof thereafter lies.

60(1) The board has exclusive jurisdiction to examine into, hear, and determine, all matters and questions arising under this Part and as to any matter or thing in respect of which any power, authority, or discretion, is conferred upon the board; and the action or decision of the board thereon is final and conclusive and is not open to question or review in any court; and no proceedings by or before the board shall be restrained by injunction, prohibition, or other process or proceeding in any court, or are removable by certiorari or otherwise into any court.

9. In addition, the defendant relies on s. 60(2) which enumerates some of the specific areas of jurisdiction of the board.

10. The defendant submits that based on the legislation and the facts presented to the court it is clear there is no action against the defendant with respect to the Workers Compensation claims advanced unsuccessfully by the plaintiff. The defendant says that any issue relating to the production or non-production of documents by the defendant with respect to the Workers Compensation claims are within the exclusive jurisdiction of

the Workers Compensation Board and there is no cause of action arising specifically from any failure by the defendant to produce such documents.

11. The defendant submits that the release signed by the plaintiff is a complete answer to any claim advanced against the defendant with respect to the employment relationship and, if it is not, any claim relating to the employment relationship is statute barred in any event.

12. The defendant submits that the statement of claim as amended should be dismissed on any or all of the grounds set out in the notice of motion and the plaintiff should not be granted leave to amend the statement of claim further. The defendant also seeks costs.

Plaintiff's Position

13. The plaintiff maintains that the amended statement of claim discloses a reasonable cause of action. He submits that the release does not provide a complete defence to the defendant. He submits that the release does not specifically make any reference to a severance package or the Workers Compensation Board. He also submits that the release is defective because it purports to release the defendant with respect to any complaint under the *Canadian Human Rights Act* or similar legislation. The plaintiff submits that this is improper and relies on the decision of the Supreme Court of Canada in *Re Winnipeg School Division No. 1 and Craton et al* (1985) 21 D.L.R. (4th) 1.

14. The plaintiff further submits that there is no proof that the defendant is subject to the *Workers Compensation Act* and advances a submission to the effect that it is not a

member of the board and therefore is not subject to protection. The plaintiff refers in his written submission to sec. 60 which is in fact sec. 61 of the *Act* which relates to indemnification of board members.

15. The plaintiff submits that the essence of his action is that the defendant destroyed or hid documents which he submits would have affected the outcome of the Workers Compensation Board hearing, that if the documents had been available he would have still been working for the defendant, and that the conduct of the defendant was cruel. He submits he has suffered damages as a result of this conduct and this all forms the basis of his cause of action.

16. At the conclusion of the submission, in response to a question put to the plaintiff, the plaintiff confirmed that all of the documents which essentially replicate the missing documentation he alleges was withheld or destroyed by the CN, has been provided to the Workers Compensation Board.

Decision

17. Upon consideration of the pleadings and the evidence I am satisfied that the amended statement of claim should be dismissed without leave to amend and the defendant should have costs of this motion on a Class II tariff basis.

18. As is unfortunately often the case with respect to pleadings filed by individuals who have chosen to represent themselves in civil litigation, it is very difficult to discern what cause of action the plaintiff is attempting to advance. The plaintiff was asked

specifically that question during the hearing and he was unable to articulate a cause of action in legal terms. Essentially he maintains that the cause of action is that the defendant acted in a manner (i.e. treated him in a way that made him angry and anxious) which contributed to the circumstances for which he advanced claims with the Workers Compensation Board and then the employer refused to produce documents which would assist him in being successful in his claims.

19. The essential facts are that the plaintiff had a fairly lengthy employment with the defendant marked by a number of unsatisfactory work episodes. In the course of employment there were a couple of incidents which precipitated the plaintiff being absent from work on leave for which he advanced Workers Compensation claims. After those incidents the plaintiff continued his employment until he was determined to be completely disabled in 1994 and the plaintiff executed a full and final release in favour of the defendant, accepting \$21,000.00 in consideration therefor. The plaintiff continued to pursue his Workers Compensation claims, exhausting all levels of appeal, and, upon being advised that there were no further appeals, in November, 2001 proceeded to launch the subject action.

20. I am persuaded that the amended statement of claim establishes no reasonable cause of action and that, additionally, in light of the evidence furnished by the plaintiff himself, the amended statement of claim is an abuse of process and is vexatious.

21. The arguments advanced by the plaintiff have no merit. The reference by the plaintiff to sec. 61 of the *Workers Compensation Act* and arguments advanced in connection with that section are irrelevant to the matters before the court. That section deals with indemnification of members of the Workers Compensation Board. I am

satisfied that the applicable sections are those sections relied on by the defendant set forth herein. The argument with respect to the effect of the release is also untenable. The release clearly releases the defendant from any actions “in any way arising out of his employment relationship with the releasee”. Whether the releasee can be released from any complaint under the Canadian *Human Rights Act* or not is irrelevant. This action does not relate to a complaint under the Canadian *Human Rights Act*. I have reviewed the *Craton* decision of the Supreme Court of Canada relied upon by the plaintiff and find it not to be applicable.

22. The plaintiff also argues that the *Limitation of Actions Act* does not apply to prevent this action from proceeding. However, it is clear that any action which he might have against the Canadian National Railway is statute barred. The employment relationship was terminated in 1994 and in the pleadings the plaintiff says that the documents which he is complaining about in the action were withheld during the period 1992 to 1994. He maintains that every level of appeal at the Workers Compensation Board gives rise to a new duty by the defendant to produce documents, and that the limitation period would run from the most recent level of appeal. I find this argument without merit. If there was a cause of action arising out of this alleged failure to produce documents, it occurred at the time the plaintiff alleges that the documents were withheld. The court must accept as true the allegation in the plaintiff’s own pleading that this occurred in the time period 1992 to 1994.

23. I have determined that the amended statement of claim should be dismissed without leave to file a reamended statement of claim and, as indicated earlier, the

plaintiff shall pay Class II tariff costs with respect to the preparation and hearing of this motion.

F. A. Lee
Master