BCLRB No. B38/2007

BRITISH COLUMBIA LABOUR RELATIONS BOARD

GORDON CHARLES LANGSTON

("Langston")

-and-

DUNGEON SIEGE PRODUCTIONS INC.

(the "Employer")

-and-

TEAMSTERS UNION LOCAL NO. 155

(the "Union")

PANEL:	Philip Topalian, Vice-Chair
APPEARANCES:	Gordon Charles Langston, for himself Barry Y. Dong, for the Employer G. James Baugh, for the Union
CASE NOS.:	53896, 55245
DATE OF DECISION:	February 21, 2007

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 Langston applies under Section 12 of the *Labour Relations Code* (the "Code") asserting that the Union violated its duty of fair representation by refusing to pursue a grievance relating to his dismissal by the Employer. Langston says that the Union treated him in an arbitrary and discriminatory fashion when it refused to pursue the grievance.

2 Almost a year after filing his Section 12 complaint, Langston filed another complaint against the Union. The second complaint alleged that the Union had violated Section 10(1) of the Code by imposing discipline on Langston (a 30 day suspension from dispatch). Langston alleges that the suspension from dispatch took place without a fair hearing and for an improper purpose: retaliation for his attempt to pursue a grievance over his dismissal. Langston also alleges that the suspension was a violation of the Union's dispatch rules, its Constitution, and natural justice.

3 Upon receipt of the second application, I advised all affected parties by letter that, having reviewed Langston's complaints, the facts upon which the Section 10 complaint are based appear substantially the same as those upon which the Section 12 complaint are based. I asked that the parties provide written submissions regarding consolidation of the complaints for the purposes of hearing.

4 I also requested submissions on Langston's application to amend his Section 12 complaint to add I.A.T.S.E. Locals 891 and 669 ("IATSE") as parties and to include IATSE as a party in his Section 10 complaint. The basis for Langston's application is that the Union and IATSE are members of the British Columbia Council of Film Unions (the "Council").

5 All parties agreed to consolidation of the two matters. In my letter of October 11, 2006 to the parties, I set out my ruling on the addition of IATSE:

> I have determined based on the submissions of Langston and Teamsters Local Union No. 155 that Langston has not established a prima facie case that would warrant inclusion of either I.A.T.S.E. local in the proceedings. He is a member of neither local and Teamsters Local Union No. 155 has submitted that sole responsibility for the actions which form the basis of the two complaints rests with it. I.A.T.S.E. Locals 669 and 891 were not involved in the decision not to process Langston's original grievance to arbitration nor did they have any part in the decision to suspend Langston from dispatch.

6 On October 20, 2006, pursuant to Rule 17B of the Labour Relations Board Rules, I directed that the parties attend a settlement conference and informed them that, if they were unable to reach agreement on a resolution of the complaints, I would write my decision based on the submissions which had been filed. The parties were unable to reach agreement at the settlement conference.

7 Extensive written submissions have been filed by all parties. I find that I am able to decide the two complaints without an oral hearing. The facts are set out in materials submitted by Langston, including a chronology, copies of various correspondence, and copies of statements provided to the Union during the course of its investigation. Additional facts not disputed by Langston are set out in the various submissions of the Union and the Employer. Where there is any discrepancy, I have accepted Langston's version for the purposes of this decision.

II. BACKGROUND

8 Langston was employed by the Employer on the set of the Dungeon Siege production as a driver. He was informed of his dismissal by letter dated August 5, 2005. The stated reasons for his dismissal included making inappropriate comments to a member of the production staff and unsafe driving, evidenced by a number of complaints received by the Employer. Specific reference was made to complaints about his driving on July 29, August 2, and August 4, 2005.

9 Langston went to the Union office on August 11, 2005. He was told that Tom Milne, the Secretary Treasurer of Local 155, was too busy to speak with him and that he should prepare a written response to the allegations contained in the termination letter. He did not do so. Rather, the following day he delivered a copy of a letter addressed to the Employer's production manager to the Union office. In that letter, he requested that he be provided with copies of written complaints 'as detailed in this letter'; referring to the August 5 dismissal letter. I note that the dismissal letter does not state that any complaints had been made in writing. Langston did not address the substance of the allegations in his letter, nor did he deny any of the allegations contained in the dismissal letter.

10 On August 25, Langston contacted the Union and stated that if the Union would not respond to his August 12 letter he would take other action. It is not clear why he demanded a response from the Union when his August 12 letter was directed to the Employer. In any case, a short time later he was contacted by the Union Dispatcher and advised that the Union would meet with the Employer to discuss his termination on August 30.

11 On September 1, Milne, wrote to Langston. He informed Langston that written statements had been provided by a number of workers regarding the allegations which had resulted in his termination. Copies of four written statements were provided to Langston by the Union. In his letter to Langston, Milne stated that he and others had met with management to discuss Langston's termination and had concluded that the

Union would be unable to have the termination overturned. As well, he informed Langston that, pursuant to the Union's dispatch rules, he was suspended from dispatch by the Union for 30 days. Finally, Milne informed Langston that he could dispute the Union's decision and that time had been reserved for him at the Executive Board meeting on September 8 if he wished to do so.

12 The Union continued to dispatch Langston to work between September 1 and September 8. Langston did not attend the Executive meeting on September 8. On September 12, Langston called in and was advised that he was 'blocked from dispatch'. He left a message asking the Senior Dispatcher or Milne to contact him. The Senior Dispatcher called him the following day and Langston records that he expressed his frustration to the Dispatcher over being abandoned by his Union. Langston does not say how the Dispatcher responded. Langston then received a letter, dated September 13, 2005, from Milne. Milne wrote:

> The Senior Dispatcher, Michael Evans and I recently reviewed your dispatch record which clearly indicated that you have been receiving Day-Hire calls up to September 7th, 2005.
>
> The Executive Board invited you to attend their meeting on Thursday, September 8, 2005 at 2:30 p.m. to challenge my position, which you did not show.
>
> I will adhere to my previous correspondence of September 1, 2005, confirming the thirty (30) day suspension with ***NO Day-Hire*** commencing Tuesday, August 30, 2005. My decision was confirmed and supported by the Teamsters Union Local No. 155 Executive Board. Therefore, Dispatch will be instructed to review your file for eligibility on September 29, 2005.

13 As noted above, Langston did not attend the Board meeting. Instead he submitted a letter to the Union from a lawyer maintaining that he was not aware of the specifics of the allegations which had resulted in his termination and demanding that the Union respond to his dismissal 'in an appropriate manner'. Several weeks later, he filed the Section 12 complaint which is the subject of this decision.

14 Langston says that he "was terminated without ever having an opportunity of rebuttal to the alleged charges of which I also never received the original copies of the alleged complaints in respect to the termination".

15 Langston also alleges that he was treated in an arbitrary and discriminatory fashion by his Union. He says that the Union declined to pursue a grievance over his termination and gave no explanation for that decision.

16 Langston asserts that the Union did not investigate the circumstances resulting in his dismissal but simply confirmed that allegations of misconduct had been made and

agreed with the Employer that dismissal was appropriate. He states:

> The evidence presented is a third party letter explaining a complaint of "inappropriate behaviour and innuendos". There are no specifics. The letter also describes that 10 minutes later the offended party was observed with me in my vehicle. In fact, this conversation was her explanation to me that Brother Ray Fairchild was pressuring her to file a complaint over the joke and she didn't see it as any kind of harassment, and refused. Later, after Brother Ray discussed this with Brother Clif Kosterman, Brother Clif approached her to file a complaint and again she refused. (November 24, 2005 submission, pages 2-3)

17 In his complaint and submissions, Langston repeatedly asserts that he was not informed why the Union decided not to proceed with a grievance. He also claims that he tried to explore available remedies but was sandbagged at every opportunity. He says that he refused to attend the September 8 meeting with the Union because he was concerned about fairness and possible bias and/or collusion with the Employer. The basis of this concern was the Union letter of September 1, informing him that his termination would not be grieved, as well as the fact that the letters supporting the allegations against him were all signed by Union members. Langston also says that he had no way to deal with Union internal processes since he had no way to know on what grounds he could appeal.

18 The Union submits that Langston's complaint should be summarily dismissed because he failed to exhaust his internal remedies before filing his complaint. He was offered the opportunity to attend the September 8 meeting and argue why the decision made by the Union should be reversed and he has not put forward any evidence to suggest that the internal appeal procedure would not have been capable of providing an appropriate remedy.

19 In the alternative, the Union says that it did everything it was required to do before making a decision not to pursue a grievance over Langston's termination. It made itself aware of the circumstances by reviewing the letter of termination and Langston's August 12 letter. The Union conducted an investigation into the allegations contained in the letter of dismissal and interviewed a number of employees from the worksite. Four employees provided written statements which confirmed the truth of the allegations. The Union then met with the Employer to discuss the termination. Having done these things, the Union made a decision not to proceed with a grievance.

III. ANALYSIS AND DECISION

A. The Section 12 Complaint

20 In dealing with a Section 12 complaint, the focus is on the conduct of the union rather than on the merits of the underlying grievance. In this case, the primary focus of

Langston's submissions has been on the merits of the grievance and the failure of the Union and the Employer to provide him with sufficient particulars to allow him to defend himself against the allegations of misconduct which resulted in his dismissal.

21 Did the Union conduct an adequate investigation? When Langston went to the Union office on August 11 to discuss his termination no one was available to speak with him. He was told to submit his response to the termination letter in writing. He did not do so.

22 Several weeks later the Union interviewed a number of employees and obtained written statements from them. The Union also discussed the termination with representatives of the Employer at a meeting on August 29. Having done those things, the Union decided that there was no point in pursuing a grievance of the termination. In its final submission the Union says:

> Following the August 29, 2005 meeting with the Employer, the Union reviewed the August 5, 2005 notice of dismissal, the August 12, 2005 letter from the Complainant to the Employer and the four written statements from the Union members regarding the allegations against the Complainant. Because the statements from the Union members supported the grounds for dismissal set forth in the August 5, 2005 notice of dismissal and by the Employer at the August 29, 2005 meeting, and the Complainant had refused or neglected to provide the Union with any response to the Union, oral or written, regarding the allegations set forth in the August 5, 2005 notice of dismissal, the Union determined that it would not be able to defend the Complainant should his termination go to arbitration. (June 20, 2006 submission, page 2).

In fact, the Union requested information from Langston on two occasions. The first was in a letter dated August 8. Milne enclosed a copy of the termination letter and in his letter asked:

> Could you please provide a written response so we may resolve any outstanding issues that may further arise.

Langston did not respond to this letter. The second occasion, as noted above, was on August 11, when Langston went to the Union hall to speak with Milne. Langston was informed that Milne was too busy to speak with him but that he should put his response to the allegations contained in the termination letter in writing. Again Langston did not provide the written response requested.

23 What Langston did do was to write a letter to the Employer noting that he had requested copies of written complaints supporting the grounds for his termination and been advised that none were available. Langston went on to state in his letter that his termination was in violation of the 'Master Agreement policy on firing' and that he would

await the Employer's response before taking the matter further. Langston copied this letter to the Union. There is a notation on it handwritten and initialled by Milne:

> Fri. August 12/2005
>
> Dispatch Day Hire till we get the request Gordon is asking for.

24 At no time did Langston cooperate with the Union in its attempt to assess the merits of his case. He did not provide the written account requested but continued to insist that he was entitled to have copies of written complaints before responding because he was unaware of the specifics of any of the allegations and was, therefore, unable to respond to them. In fact, Langston clearly had knowledge regarding at least one of the matters resulting in his termination. In his submission to the Board, dated November 24, 2005 he states:

> The evidence presented is a third party letter explaining a complaint of "inappropriate behaviour and innuendos". There are no specifics. The letter also describes that 10 minutes later the offended party was observed with me in my vehicle. In fact, this conversation was her explanation to me that Brother Ray Fairchild was pressuring her to file a complaint over the joke and she didn't see it as any kind of harassment, and refused. Later, after Brother Ray discussed this with Brother Clif Kosterman, Brother Clif approached her to file a complaint and again she refused.
>
> As a simple union member I have found no reference to a "one time" casual comment as being grounds for dismissal in the LRB hearings I reviewed, human rights hearings or under the definition of sexual harassment on any associated website. Yet, the union not only accept the employer's argument. They escalated what was described in the dismissal letter from "inappropriate comments" to "sexual harassment". This all based on comments that were in essence a joke and to an employer (sic) who refused to even file a complaint. (pp. 2 - 3)

25 It is clear from these statements that Langston was well aware of the substance of the complaint which resulted in the allegation of harassment against him. He knew who the individual he was accused of harassing was; he knew exactly when and where the incident was alleged to have taken place; and his reference to a 'one time casual comment...in essence a joke' gives rise to a reasonable inference that he knew exactly what the Employer was referring to in the dismissal letter. Yet he elected not to provide the Union with any information to use in his defence, either before or after receiving the September 1 letter.

26 Langston denies any knowledge of the complaints about his driving or the specific allegations resulting in those complaints. His legal counsel, in his September 8 letter to the Union states:

> My client still has not been made aware of the specific allegations against him nor has he been given an opportunity by Dungeon Siege or the Union to answer the allegations of sexual misconduct. Mr. Langston denies any misconduct of a sexual nature.... The other allegations in the August 5, 2005 letter are that he made offensive comments to an unidentified person and that he drove aggressively, again by unidentified persons. No specifics are disclosed and obviously, Mr Langston is unable to respond because there is nothing to respond to. But amazingly, the Union (in addition to the Fairchild letter) provided three letters from Union executives and members. They do not deal with the driving incident alleged by Dungeon Siege. Rather the letters from [the three individuals] refer to improper driving incidents which do not form any part of the complaint by Dungeon Siege. (pp 2-3)

27 In fact, the August 24 letter from the production Transportation Coordinator obtained by the Union in the course of its investigation, a copy of which was provided to Langston with the Union's letter of September 1, included a number of very specific allegations:

- On [July 22] I spoke to Brother Langston about his speed and asked him to please slow down.

- On July 29, 2005 ... one of our key actors was requesting that he never have Brother Langston drive him again. His comments were that his driving tactics were very aggressive and unsafe. He also mentioned his verbal barrage of other drivers was very upsetting. Brother Langston was then warned again about his driving and reassigned to another task.

- On August 2, 2005 Brother Langston...was instructed to pick up our Director's elderly mother and bring her to the set. ... She requested please do not have Brother Langston pick her up again because it was a very scary ride to set because of his aggressive driving. She also said she asked him to slow down but he did not.

Each of these allegations refers to a specific date and to conversations alleged to have taken place between various individuals and Langston regarding matters that were, in fact, specifically referred to in the August 5 termination letter. However, Langston did not respond to the allegations nor did he attend the Executive Board meeting to which he was invited on September 8 to offer his response to the allegations.

28 Langston maintains that when the Union provided him with copies of the written statements, it had already decided not to proceed with a grievance and:

> The union argues that I did not exhaust internal remedies citing the Humber and Judd decisions, based on a letter inviting me to "discuss" my concerns. At that point I could not discuss their "investigation" since I had been excluded from the process.

29 Langston says that he was concerned about possible bias or collusion with the Employer by the Union and for this reason there was good reason to believe that it would be futile to pursue any avenue of appeal through the Union. No reason for his concern is offered other than the reference to his exclusion from the investigation process.

30 I have concluded, based on Langston's submissions, that he was not excluded from the investigation process by the Union. Rather, he elected not to participate in that process.

31 The Board's leading decision in Section 12 cases is *James W.D. Judd*, BCLRB No. B63/2003, 91 CLRBR (2d) 33 *("Judd")*. In that decision, the Board provides clear direction in relation to the subject of exhausting internal union appeals:

> There are two further requirements we think are sufficiently important to mention. The first is that the complaint must be filed in a timely manner. If there is unreasonable delay in filing the complaint, it will be dismissed, unless there is a compelling explanation for the delay.
>
> An acceptable explanation may be that the complainant was waiting for the union's internal appeal process regarding the matter to be completed (if one is available). This brings us to the second requirement, which is that a complainant must exhaust internal remedies. If the union has internal avenues of appeal then the complainant should first use these -- unless it would be impractical or ineffective to do so -- before filing a Section 12 complaint. We have set out below the excerpts from the Board's Practice Guideline regarding the Duty of Fair Representation which discuss these two requirements:
>
> Q: Is there a time limit for filing a Section 12 complaint?
>
> A: A complaint under Section 12 must be filed (in an acceptable form) within a reasonable time after the events that are the subject of the complaint. If not, the complaint may be dismissed on the basis of undue delay. What length of time is "reasonable" depends on the circumstances, but the Board has often said it is "measured in months, not years". For example, a complaint filed within two months is

> generally acceptable; a delay of several months may cause the complaint to be dismissed; and a complaint filed a year after the event will generally be dismissed unless very compelling reasons for the delay are provided. Where there is significant delay (i.e., more than 3 or 4 months) the complaint should include the explanation for the delay (e.g., if the complainant was pursuing the union's internal appeal process).
>
> Q: Is there anything else I need to do before making my application?
>
> A: You must complete any internal union procedure which is available to you. For example, you may be required to file a grievance. You should also check to see if your local union has an appeal procedure. Your national or international union may hear appeals from decisions by local unions. That process must be completed before you file a Section 12 complaint. The only exception is where you can show the Board that an internal union appeal is not practical because of the length of time you would have to wait, or because of costs such as travel costs which you would have to meet, or there is a good reason to believe it cannot provide you with an appropriate remedy.
>
> (paras. 96 - 97)

32 The requirement to exhaust internal union appeals before filing a Section 12 complaint is not optional and the exceptions to the Board's policy in relation to exhausting internal union appeals are very narrow and restrictive. A complainant may be granted an exception only where it is shown that it is impractical to resort to internal appeal procedures because of the delay that would result; where the costs that would be incurred make it impractical to pursue that course; or there is good reason to believe that such a course of action cannot provide an appropriate remedy.

33 There is no evidence before me from which I can conclude that Langston's case falls within the exceptions to the Board's policy. There is no issue of delay. The Executive Board meeting he was invited to attend was scheduled one week after he was informed that the Union did not think that it could defend his termination and would not file a grievance. No issue of cost has been raised. Langston simply asserts that the Union had conducted its investigation in a biased and unfair manner, which, in his submission, must lead to a conclusion that there was no appropriate remedy through internal appeal processes. This is a bald assertion, unsubstantiated by any particulars.

34 I do not accept Langston's argument. It is true that the Union might have been more rigorous in its investigation of the allegations against him. I note, for example, that the Union appears to have made no attempt to obtain a statement directly from the

complainant regarding the harassment allegation. It was content to make its decision based on statements made by Langston's co-workers (to whom the original complaints had been made); the statement of the Transportation Coordinator responsible for Langston's assignments on the Dungeon Siege production; and on information provided by representatives of management. However, against this must be balanced Langston's lack of cooperation in the process. He maintains that he was excluded by the Union from the investigation process. In fact, he chose to exclude himself. He was asked on two occasions before September 1 to provide his response, in writing, to the Union, but he did not do so. He made no objection to the requests, but simply did not respond.

35 If Langston had a response to the allegations which resulted in termination of his employment, he was clearly put on notice that he should provide that response when he received the September 1 letter from the Union. He elected not to do so.

36 When Langston wrote to the Employer, copying the Union, on August 12, he did not say that he did not know what the complaints were about. Nor did he deny the conduct alleged in the letter of termination. What he did say was that, since he had not been given an opportunity to review and respond to the complaints prior to being terminated, the termination was "in violation of the Master Agreement policy on firing".

37 In his June 2006 (sic) submission to the Board, Langston characterizes the issues as being:

> a. the right of an employer to terminate a union employee under contract without prior warnings, meetings or discussions and;
>
> b. the right of a union to refuse to grieve the termination without giving the employee the right to even discuss the matter with the union....

The first is a matter which properly falls within the grievance and arbitration process. The second, even if substantiated, is a matter which should be pursued through available internal processes before being the subject of a complaint to the Board.

38 I find that Langston has not put forward any evidence to suggest the internal appeal procedure to the Union Executive Board could not provide an appropriate remedy.

B. The Section 10 Complaint

39 Turning to Langston's Section 10 complaint, Langston submits that when the Union put him on daily dispatch following his dismissal from the Dungeon Siege production it violated dispatch rules, the [Union] constitution and natural justice. He asserts that 'the union conspired with the employer to have me dismissed or that the union had conspired to have me dismissed and the employer had agreed'.

40 Neither the Employer nor the Union argued that the Section 10 complaint is untimely. The Board has previously stated that the same considerations regarding timeliness apply in the case of a complaint of a violation of Section 10 of the Code as in the case of a Section 12 complaint: *Vincent Anderson*, BCLRB No. B529/98. However, in the present case Langston did include in his original Section 12 complaint a statement that he considered his suspension from dispatch to be a "Possible Section 10 Violation". Both the Union and the Employer in their submissions responding to Langston's Section 12 complaint dealt with the Section 10 issue. Accordingly, and in the absence of any objection, I will deal with Langston's Section 10 complaint on its merits.

41 As a result of Langston's dismissal from the Dungeon Siege production, the Union suspended him from dispatch for 30 days. He submits that the 30 day suspension from dispatch was also a violation of dispatch rules, the Union constitution and natural justice.

42 When the Union realized that it had continued to dispatch Langston to work up to September 7, it informed Langston that it would not dispatch him for the remainder of his 30 day suspension but that it would not extend the suspension period by the 7 days that he had been dispatched in the suspension period. Langston submits this too was a violation of the dispatch rules, the Union constitution and natural justice.

43 I note that Langston has not challenged the validity of the dispatch rules, nor the authority of the Union to make such rules under the terms of its constitution.

44 Section 10 of the Union's dispatch rules provides:

> SECTION 10 RULE INFRACTIONS
>
> ...
>
> 2. Firings
>
> (a) Fired for Cause - no grievance - Suspension from dispatch
>
> (b) Fired for Cause - grievance upheld - No suspension from dispatch
>
> (c) Fired for Cause - grievance denied by Arbitrator - Suspension from dispatch
>
> (i) first offence - 30 days suspension from dispatch
>
> (ii) second offence - 60 days suspension from dispatch

(iii) third offence - 90 days suspension from dispatch

or, (iv) such other length or form of penalty as for a subsequent offence, or in substitution for a named offence in the presence of mitigating circumstances, as the Secretary-Treasurer of the Union in his sole discretion reasonably determined to be appropriate.

45 The 30 day suspension from dispatch imposed on Langston was consistent with the provisions of Section 2(a) of the dispatch rules set out above.

46 Section 10 of the Code provides:

10. (1) Every person has a right to the application of the principles of natural justice in respect of all disputes relating to

(a) matters in the constitution of the trade union,

(b) the person's membership in a trade union, or

(c) discipline by a trade union.

(2) A trade union must not expel, suspend or impose a penalty on a member or refuse membership in the trade union to a person, or impose any penalty or make any special levy on a person as a condition of admission to membership in the trade union or council of trade unions

(a) if in doing so the trade union acts in a discriminatory manner, or

(b) because that member or person has refused or failed to participate in activity prohibited by this Code.

(3) If a trade union charges, levies or prescribes different initiation fees, dues or assessments in respect of a person according to whether the person applies or has applied for membership in the trade union before or after an application for certification by the trade union to represent the person as bargaining agent, the fees, dues or assessments are deemed to be discriminatory for the purpose of subsection (2) (a).

47 In his Section 10 complaint, Langston states:

> I received a call from Mike Evans and I advised him at that time that I was frustrated by the violations of the contract, along with the proper procedures, and the violation of my rights as a union member (presumption of innocence and a vigorous defence). I further advised him that I felt that my Union had abandoned me, and refused to interview or get my side of the story and proceed with a façade of doing something for me. I was excluded from all procedures and do not feel I was given a fair hearing.

Langston also says:

> As noted in the associated Section 12 complaint and the chronology I attempted to contact the union repeatedly to file a grievance and was refused any assistance. I did not even get a meeting or a phone call.

Dealing first with the statement that he tried repeatedly to get the Union to file a grievance, according to Langston's own account he was requested on two occasions to provide the Union with a written statement responding to the allegations in the letter of dismissal. Langston did not provide the requested statement and, as noted above, did not even deny the allegations. Instead he maintained that he was unable to respond because of lack of specificity. This was clearly untrue in the case of the harassment alleged against him. Regarding the driving infractions, there were specific dates listed in the letter of termination. One statement provided to Langston by the Union with its September 1 letter referred to verbal warnings from the Transportation Coordinator to Langston about his driving. The dates of those warnings, July 22 and July 29, corresponded with dates specified in the letter of dismissal. The dismissal letter also referred to a request by a passenger on August 2 that he slow down. The Transportation Coordinator's statement referred to this incident and a request by the passenger that Langston not be assigned to drive her again.

48. It is true that Langston was not provided with the details regarding the driving complaints by the Union until September 1 when it informed him that it had completed its investigation and had concluded that it could not defend a grievance challenging his termination. The collective agreement provides:

> 10.06 **Discharge**: No Employee shall be discharged ... by an Employer without just and reasonable cause. If the Council or Council-member Union believes the action to be unjustified, the Council or Council-member Union may file a grievance which shall be handled in accordance with article Eleven....
>
> 11.01 **Statement of Policy:** The Council or Council member(s) and the Employer recognize the desirability of exerting an earnest effort to settle grievances at the earliest possible time consistent with the provisions of this Article. The Council shall make a careful and thorough investigation of an Employee's complaint before submitting it under the grievance procedure in order to ascertain whether, in its opinion, the complaint is reasonably justified under the terms of this Master Agreement and that there is reasonable ground to believe that the claim is true in fact. No Employee shall be discriminated against for reasonably making a complaint or filing a grievance asserting a violation of this Master Agreement. There shall be no slowdown, disruption or stoppage of work including strikes or lock-outs.

The Union conducted the investigation it was able to do in the absence of any cooperation from Langston. It did not have his side of the story but that was not the fault of the Union. It asked Langston to provide his response and he refused to provide one. The Union, through its investigation, found there was evidence to support the grounds for dismissal set out in the termination letter. There was no contrary evidence; not even a denial by Langston. Accordingly, consistent with the policy set out in article 11.01 the Union elected not to submit Langston's complaint under the grievance procedure.

49 It is a well established principle that one who is afforded the opportunity to be heard and declines that opportunity cannot then assert that there has been a denial of natural justice: *Helping Hands Agency Ltd.*, BCLRB No. B386/99; *Gienger Contracting Limited*, IRC No. C106/92 (Upheld on Reconsideration IRC No. C164/92); *Re International Association of Bridge, Structural and Ornamental Iron Workers, Local 97 v. British Columbia (Industrial Relations Council)* (1987), 16 BCLR (2d) 204 (S.C.) and *Harbourview Electric Ltd.*, IRC No. C212/88. In this case, that principle applies both to the refusal of the Union to process a grievance regarding Langston's dismissal and to the 30 day suspension from dispatch.

50 Article 20(G) of the Union Constitution states:

> (G) Rules shall be established which shall govern the method by which the membership shall attain work within the Movie industry. There shall be the following divisions: 1) drivers.... Each division shall establish the rules governing the employment of the members of that division which shall be proposed, amended, voted upon and adopted solely by the members of that specific division.

It is under authority of this provision that the dispatch rules are promulgated, including the authority to suspend from dispatch in specified circumstances. Langston was dismissed for cause by his Employer and the Union, having conducted an investigation, declined to file a grievance. This brought the circumstances squarely within clause 10.2 (a) of the dispatch rules: Fired for Cause - no grievance - Suspension from dispatch. Neither was done without regard to Langston's right to be heard. He was offered, and refused, that right. He cannot now complain about the consequences of that refusal.

51 Langston's complaint provides no particulars of the alleged violation of Section 10(2). That section prohibits a Union from suspending or imposing a penalty on a member if in doing so it acts in a discriminatory manner or because the member has refused or failed to participate in activity prohibited by the Code.

52 For the reasons set out above, I find that the Union did not violate Section 10(1) of the Code when it suspended Langston from dispatch for 30 days because he had been terminated for cause from the Dungeon Siege production. Nor does the complaint establish any basis for a finding that the Union violated any other provision of Section 10 of the Code.

53 One final matter remains outstanding: whether or not the BC and Yukon Council of Film Unions should have been included as a party to Langston's Section 10 and 12 complaints. The constituent members of the Council include IATSE and the Union. Langston has stated that "While the primary violation was unconstitutional discipline by the Teamsters Local 155, this suspension resulted from an investigation and consultation with the other parties as per Article 11 of our Master Agreement".

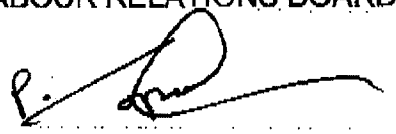
54 In light of the decision set out above, whether or not the Council should be included as a respondent is moot. Accordingly it is not necessary for me to decide the issue and I decline to do so.

CONCLUSION

55 I have concluded that Langston's Section 12 application should be dismissed. The application was filed prematurely because Langston failed to exhaust his internal union appeals.

56 I find the Section 10 complaint is without merit. That complaint is also dismissed.

LABOUR RELATIONS BOARD



PHILIP TOPALIAN
VICE-CHAIR