

## SCHEDULE “A”

### Nature of Complaint/Statement of Material Facts

#### Overview

1. The Complainant, Service Employees International Union Local 2, Brewery General and Professional Workers’ Union (“SEIU”) alleges the Respondent has violated sections 53 and 58 of the *Trade Union Act* (“the *Act*”) by terminating union organizers in retaliation for organizing a union in their workplace. The Employer has enacted this retaliation under the guise of layoffs required to maintain financial stability. However, in doing so the Employer has terminated only twenty-five percent (25%) of the workforce, but a full one hundred percent (100%) of the Union’s organizing committee. Furthermore, the impacted workers, who are living paycheck-to paycheck, have been told that they will only receive desperately needed severance if they give up their rights under the *Trade Union Act*. For the reasons which are further particularized in this complaint, the Employer’s conduct has all the hallmarks of an orchestrated campaign of retaliation aimed at crushing workers’ rights.
2. As a remedy, the Union will be seeking orders that: all affected workers are reinstated, general and pecuniary damages to the impacted workers and the Union itself, declaratory relief, and that the Board’s decision be posted in the workplace.

#### The Parties

3. SEIU Local 2 is a trade union within the meaning of the *Trade Union Act*.
4. The Respondent, Java Blend Coffee Limited, is a roasting production, and retail business that operates in four locations in the Halifax Regional Municipality including three (3) cafes Java Blend North Street, Java Blend Sackville Street and Cortado Tasting Bar and a Roastery and production outlet located at 30 Borden Avenue in Dartmouth.
5. Java Blend North Street is the oldest and most commercially successful of the café locations. In 2019, the current ownership group purchased Java Blend and in 2022 expanded its business to the Sackville Street location (formerly known as the Ville Caffeine Bar).

#### Summary

6. The present unfair labour practice complaint concerns a series of violations of the *Act* committed by the Respondent. Violations stem from the termination of nine (9) employees on Tuesday January 23<sup>rd</sup>, 2023, who worked out of Java Blend’s cafes, which directly interferes with the employees’ ability to exercise their rights under the *Act*.

7. Of the nine (9) employees terminated four (4) were pivotal in the union drive and noted members of the Union's organizing committee. These four (4) employees include:
  1. Emily "Em" Kristensen (Barista Shift Supervisor North Street);
  2. Emma "Coop" Cooper (Barista Shift Supervisor North Street);
  3. Cailin Pygott (Barista Shift Supervisor North Street);
  4. Andrew "Andy" Mawko (Keyholder/Barista North Street).

## **Background**

### ***The Union Organizing Campaign***

8. In Early March of 2023 the Union was approached by staff from Java Blend regarding unionizing. Cailen Pygott, Emma Cooper, Andy Mawko, and Em Kristensen were lead organizers throughout the process and made up the Union's Internal Organizing Committee (the "Committee")
9. All four of these Committee members have had conversations with co-workers regarding the union and have campaigned for co-worker support.
10. On May 31, 2023, Tina Oh, shared a photo to her Instagram page of Cailen Pygott where Mr. Pygott is holding his signed membership card. The post includes text which reads "One of our INCREDIBLE member-organizers & leaders of the JB campaign". The post was viewed by an account with the name "Alex Lee". Alex Lee is one of the owners of Java Blend Coffee limited.
11. On June 2, 2023, the day of the Certification Vote, Union card signers and supporters went public with their campaign via the SEIU social media pages including the Union's Instagram and Facebook accounts. Included in the post were images of Cailen Pygott, Emily Kristensen, Emma Cooper, and Andrew Mawko. All workers pictured in the collage were either workers at Java Blend North Street or Sackville Street.
12. Cooper has worked with the company since May 2021, Andy since December 2019. Cailen since June 2017, and Em since October 2022.
13. All four employees have worn SEIU Local 2 apparel to work on a consistent basis and have been active on social media regarding their support for the unionization of Java Blend.
14. Prior to the termination the Instagram account attributed to "Alex Lee" had been following Mr. Pygott's personal Instagram account. Mr. Pygott notes that this account has regularly viewed Mr. Pygott's Instagram stories. Mr. Pygott blocked this account following his termination.
15. Em Kristensen has been an open supporter of the unionization efforts. Ms. Kristensen has often spoke to co-workers about her dissatisfaction with upper management and has openly supported the union campaign through conversations with co-workers. Ms. Kristensen often posted on social media regarding her support for the unionization of Java Blend.

### ***The Employer Backlash***

15. In June 2023, Cailen Pygott was approached by one of the owners, Alex Lee, about a week following the Certification Vote. Mr. Lee advised Mr. Pygott that the company was in poor financial health and that investors were pulling out. He further advised Mr. Pygott that an investor had advised the ownership group to terminate Mr. Pygott. Mr. Lee further advised Mr. Pygott to seek legal counsel outside of the Union.
16. In the Employer's June 9, 2023, submissions to the Labour Board the Employer objected to the Union's application for certification, in part, on the basis that an "all employee" bargaining unit was inappropriate. In its submissions, the Employer argued that the Board should only certify a bargaining unit consisting of baristas and shift supervisors at the Employer's North Street and Sackville Street locations. The Employer, in its second to last paragraph of its submissions, states that it "expects that the membership cards will demonstrate it is the barista who want to be part of the Union and not the other classifications. It is important to note that the baristas and shift supervisors primarily work at the North Street and Sackville Street locations.
17. In September 2023, Mr. Pygott wrote a letter to office manager Doreen MacLean regarding Reesa Sorell's (multi store manager) mistreatment of Em Kristensen. Mr. Pygott asked that this letter be given anonymously to the ownership group. Doreen MacLean advised the ownership group, after they demanded to know who the letter was from, that it had been Mr. Pygott who drafted the letter. This led to a meeting between Joseph Dunford, owner, and Mr. Pygott.
18. During the above-noted meeting, Mr. Dunford advised Mr. Pygott there wasn't a union yet and therefore Mr. Pygott was not a representative for the employees. Mr. Dunford then made reference to how it was unfortunate that things kept getting pushed back at the Labour Board following which Mr. Pygott indicated that the most recent set back had been resolved to which Mr. Dunford seemed surprised. The following week the employer then pushed back on the interviewing of Ms. Kristensen with respect to the outstanding matter regarding the scope of the bargaining unit. Mr. Dunford further advised that he would be personally discussing the content of the letter with Em Kristensen.
19. During a discussion between Mr. Dunford and Ms. Kristensen Mr. Dunford advised Ms. Kristensen that he did not own Java Blend that the bank did. Mr. Dunford advised that he could not terminate Ms. Sorrell as it would be extremely hard to fire someone. He further stated he would not take further actions until physical evidence was produced. All interactions involving Ms. Sorrell and Ms. Kristensen had occurred in person. Ms. Kristensen did not feel they would be able to produce "physical" evidence, so they dropped this matter.
20. In January 2024 Mr. Pygott was approached by owner, Alex Lee, and brought into a meeting. Mr. Lee accused Cailen of "coming for everything we have". He further advised Mr. Pygott that if the Union did not attempt to unionize Cortado that ownership would have been able to sell Cortado and therefore allocate more money into Java Blend.

21. On Tuesday, January 23<sup>rd</sup>, the Employer held two separate meetings with employees at the North Street location. Only employees from both the North Street and Sackville locations were in attendance. The first meeting took place at 11:00am. During this meeting employees were notified of the upcoming terminations and told they would not be impacted. The second meeting took place at 12:00pm. This meeting included the nine (9) individuals who were terminated.
22. The termination of 9 employees represents approximately 25% of the employer's total staff. However, it represents 100% of the Union's Committee.
23. In the 12:00pm meeting employees were provided with an agreement to sign which would among other things release the employer from liability, prevent the employee from participating in further legal actions against the employer, and provide the employee with a monetary settlement. The settlement would have amounted to twice what the employees would be owed under Labour Standards legislation. A letter attached to the agreement is signed by the four (4) owners, namely, Adam Bose, Alex Lee, Joseph Dunford and Ibrar Ul Haq Malazai. The agreement further states that it is to be kept confidential. None of the four (4) individuals named in this Complaint have signed on to this agreement.

#### ***Support for Pete's Frootique SEIU Local 2 Strike***

24. All four employees had been active supporters of the Pete's Frootique SEIU Local 2 strike which took place from November 2023 to January 2024. Mr. Pygott consistently posted on social media regarding his support. On November 19<sup>th</sup>, 2023, Mr. Pygott spoke at a rally for striking Pete's Frootique workers. His participation in this rally was noted on the SEIU Local 2's website. Mr. Mawko was also in attendance at this rally and shared a photo, with noted words of support, of Mr. Pygott speaking to his Instagram account.
25. Ms. Kristensen and Mr. Mawko have reshared many posts on their social media accounts pertaining to their support of the SEIU Local 2 Strike. Mr. Mawko, Ms. Kristensen and Mr. Pygott all have public social media accounts.

#### ***Social Media Views Post Termination***

26. Following the termination, the above-noted employees, Em Kristensen, Cailen Pygott and Andy Mawko took to their social media accounts. Each shared a post with text indicating that they had been terminated from Java Blend. An account with the name "Jaquelyn Salloum" viewed Mr. Pygott and Ms. Kristensen's posts. Further, an account with the name "reesasorell" viewed Mr. Pygott's post. Reesa Sorrell is the multi store manager of Java Blend and Jaquelyn Salloum is the wife of owner, Adam Bose, of Java Blend.
27. Accounts with the name "Java Blend Coffee" and "Jaquelyn Salloum" have been viewing the Instagram stories of Andy Mawko following the termination.

**Relevant Law**

**28. Sections 53 and 58 of the Act state:**

*53 (1) No Employer and no person acting on behalf of an employer shall*

*(a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union; or*

.....

*(3) No employer and no person acting on behalf of an employer shall*

*(a) Refuse to employ or continue to employ any person or otherwise discriminate against any person in regard to employment or any term or condition of employment, because the person*

*(i) is or was a member of a trade union,*

...

*(v) has made an application or filed a complaint under this Act,*

.....

*(vi) has participated in a strike that is not prohibited by this Act or exercised any right under this Act;*

*(e) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of a trade union or to refrain from*

*(i) testifying or otherwise participating in a proceeding under this Act,*

*(ii) making a disclosure that he may be required to make in a proceeding under this Act*

.....

*58 (1) No person shall seek by intimidation or coercion to compel a person to refrain from becoming or to cease to be a member of a trade union or an employers' organization*

.....

**29. Section 56 (3) states:**

*(3) Where the complainant establishes that it is reasonable to believe that there may have been failure by an employer or any person acting on behalf of an employer to comply with*

*clause (a) of subsection (3) of Section 53, the burden of proving there is no failure shall be upon the employer or the person acting on behalf of the employer.*

30. Section 53(1)(a) of the *Act* prohibits an employer, or person, acting on behalf of an employer, from interfering with a trade union's representation of its members irrespective of motive or intent.
31. Unlike subsection 53(1), subsections 53(3)(a) and 58 of the *Act* require some indication of anti-union animus. It is trite law, however, that improper motive need not be the dominant motive for a person or employer to be a breach of sections 53(3)(a) or 58 of the *Act*.
32. The *Amalgamated Transit Union Local 508 v Zinck's Bus Company Limited*, 1994 CanLII17662 (NS LRB) decision, as cited in *Canadian Maritime Engineering v United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United States and Canada, Local 57*, 2022 NSLB 55, stands for a number of factors the first and second of which are cited as:
  1. *That under s. 53(3)(a), the Complainant has a light burden to satisfy the trier of fact it is reasonable to believe there was a failure of the employer to follow s. 53(3)(a).*
  2. *That if the Complainant satisfies the initial burden, the onus shifts to the Employer to demonstrate that, on a balance of probabilities, the Complainant's union membership was not a "significant" factor in the treatment, to refuse to continue to employ Mr. Harroun in this case.*<sup>1</sup>
33. As noted above the initial burden of the complainant to prove anti-union animus has consistently been established as a "light" burden.<sup>2</sup> The Board has further gone on to explain how to substantiate anti-union animus:

*These cases indicate that it is rare an employer will admit they are anti-union and a board may piece together a pattern of circumstantial evidence as proof of anti-union animus. The question is whether the evidence is consistent with the preponderance of probabilities which a practical and informed person would find to be reasonable in the circumstances.*<sup>3</sup>

[emphasis added]

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<sup>1</sup> *Canadian Maritime Engineering v United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United States and Canada, Local 57*, 2022 NSLB 55 at para 258.

<sup>2</sup> *Jenna Cameron and Canadian Union of Public Employees, Local 5483 v Wynn Park Villa Limited*, 2022 CanLII 11838 (NS LB) at para 424 [*Wynn Park*].

<sup>3</sup> *Ibid.*

### Application to this case

34. In light of the foregoing, SEIU Local 2 submits the following reasons give rise to a strong inference that the Employer's decision to terminate the Union Committee members was motivated, at least in part, by anti-union animus:
- (a) the Employer was actively aware of the Committee members' support for the union via their viewing of these individuals' social media accounts, by their SEIU apparel in the workplace, and their openness to relay their support for the campaign to the broader workplace;
  - (b) The Employer's past statements about the Union, Committee members, and the perceived impact on its business interests, including
    - a. The June 2023 statement by Mr. Lee that investors wanted the ownership group to fire Committee member Mr. Pygott;
    - b. The statement in September 2023 by Mr. Dunford to Mr. Pygott that "there wasn't a union yet" and therefore Mr. Pygott was not to represent the employees;
    - c. The statement in January 2024 by Mr. Lee to Mr. Pygott accusing a Committee member of "coming for everything we have" and asserting that the Unionization drive had thwarted business plans to sell the Cortado location.
  - (c) The Employer's belief, as reflected in its submissions to this Board that union support is concentrated amongst the baristas and shift supervisors at the North Street and Sackville Street locations,
  - (d) The unequal impact of the layoffs only impacting locations and classification where the Employer believes there is the most union support.
  - (e) The Employer's implementing layoffs, ostensibly in response to financial pressure, at its most established and commercially viable location (North Street).
  - (f) The employer attempted to coerce and compel individuals living paycheck-to-paycheck to rid themselves of their rights under the *Trade Union Act* in exchange for a financial settlement.
  - (g) Further the numerous conversations the ownership has had with organizing committee members regarding the Union all point to a targeted campaign to rid the workplace of union supporters.

35. The Respondent's actions, in terminating the above noted employees is in direct violation of the *Trade Union Act*. The Employer knew these individuals were active supporters in the unionization efforts of Java Blend Coffee Limited and specifically targeted them for these reasons.
36. As a result, the remedies requested in Schedule "B" are necessary in order to redress the harm occasioned by the Respondent's actions.

**Request for Disclosure**

37. The Union further requests that the employer disclose all financial statements from the last three (3) fiscal years and any and all communications digital or otherwise pertaining to the decision to terminate these nine (9) employees.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**



## **SCHEDULE “B”**

The Complainant, Service Employees International Union, Brewery, General & Professional Workers’ Union Local 2 (“SEIU”), respectfully requests the following remedies:

- 1) A declaration that the Respondent, Java Blend Coffee Limited has violated ss. 53(1)(a), 53(3)(a) and 58(1) of the *Trade Union Act* (“the Act”).
- 2) An Order that the Respondent immediately reinstate the nine (9) individuals to their former positions and reimburse for any and all lost wages and/or benefits.
- 3) An Order awarding general and pecuniary damages to the impacted workers and the Union.
- 4) An Order that the final decision in this matter be posted in a conspicuous location at all of the Employer’s locations for a period of thirty (30) days and further circulated to all employees of Java Blend Coffee Limited.
- 5) Such other relief as the Complainants may request and the Board deems just.