Federal Court of Appeal  Cour d'appel fédérale

Date: 20151223

Docket: A-542-15

Citation: 2015 FCA 295

CORAM: **NOËL C.J.**
BOIVIN J.A.
RENNIE J.A.

BETWEEN:

LAURENTIAN PILOTAGE AUTHORITY

Appellant

and

CORPORATION DES PILOTES DU SAINT-LAURENT CENTRAL INC.

Respondent

Heard at Ottawa, Ontario, on December 22, 2015.

Judgment delivered at Ottawa, Ontario, on December 23, 2015.

REASONS FOR JUDGMENT BY: NOËL C.J.

CONCURRED IN BY: BOIVIN J.A.
RENNIE J.A.

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REASONS FOR JUDGMENT

NOËL C.J.

[1] This is an appeal from a decision of Justice Locke of the Federal Court (the Federal Court judge), dated December 14, 2015, (2015 CF 1382) dismissing the motion for an interlocutory injunction filed by the Laurentian Pilotage Authority (the LPA). The motion was to compel the Corporation des pilotes du Saint-Laurent Central Inc. (the Corporation) to add to the Work Schedule of licensed pilots in District No 1, the required complement of pilots for the period

from December 22, 2015, to January 4, 2016, according to the terms of a new service contract ratified by both parties on October 15, 2015.

[2] In light of the tight timelines, the deadlines specified under the *Federal Courts Rules*, SOR/98-106, were abridged and the appeal was expeditiously heard in a one-hour hearing at Ottawa. The brief reasons that follow were issued the next day.

[3] The Federal Court judge conducted his analysis on the basis of the tri-partite test established by the Supreme Court in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] S.C.R. 311 [*RJR-MacDonald*]. He found that the LPA had succeeded in establishing the existence of a serious issue and irreparable harm, but that the balance of convenience did not favour issuing an interlocutory injunction. He therefore dismissed the LPA's motion.

[4] Before us, the LPA submits that the Federal Court judge erred in law in concluding that the balance of convenience favoured the Corporation. For its part, the Corporation is asking that we uphold the Federal Court judge's decision in this regard. It adds that the Federal Court judge was wrong to conclude that the LPA had suffered irreparable harm, with the result that the injunction sought be the LPA could not have been granted in any event.

[5] The decision to grant or dismiss a motion for an interlocutory injunction is a discretionary one. A review of the lawfulness of a discretionary decision ought to be conducted within the general appellate framework set out in *Housen v. Nikolaisen*, 2002 SCC 33, depending on whether it is a question of law, of fact, or a question of mixed fact and law (*Jamieson*

Laboratories Ltd. v. Reckitt Benckiser LLC, 2015 FCA 104, para. 21, citing *Imperial Manufacturing Group Inc. v. Decor Grates Incorporated*, 2015 FCA 100, paras. 18 and 19).

1st branch: serious issue

[6] The existence of a serious issue is not in question in this appeal. In addressing this question, the Federal Court judge explained that his decision was, for all intents and purposes, equivalent to a final decision, given the time constraints he was under. Thus, he allowed himself to make a more definitive finding than he otherwise would have, had an arbitrator been afforded enough time to properly dispose of the matter (Reasons, para. 19).

[7] The Federal Court judge dismissed the Corporation's position according to which the customs and usage in the context meant that the pilot's Assignment Schedule initially established for 2015 (the 2015 Schedule) was unaffected by the signing of the new service contract during the year (Reasons, para. 22). Despite the fact that it had been entered into on October 15, 2015, the contract took effect on July 1, 2015 (Exhibit P-2 of the LPA Record).

[8] As for the moment the Assignment Schedule was to be changed, the Federal Court judge pointed out that under the terms of the contract, [TRANSLATION] "[n]othing indicates that these [the new assignment] requirements will not apply immediately", namely, upon the contract's coming into force (Reasons, para. 24). He then dismissed the Corporation's contention that it was not possible to change the Assignment Schedule during the year, determining that the evidence submitted in this regard by the Corporation was insufficient (Reasons, para. 25).

[9] According to the Federal Court judge, the LPA had succeeded in establishing that the Corporation had an obligation to comply with the new assignment requirements immediately upon signature of the contract (Reasons, para. 27). The issue raised by the LPA in support of the issuing of the injunction was therefore not only a serious one but was likely to lead to a decision favourable to the LPA on the balance of the evidence presented before the judge.

2nd branch: irreparable harm

[10] Under the irreparable harm branch, the Federal Court judge also dismissed the Corporation's position as follows (Reasons, para. 32):

> [TRANSLATION]
>
> [32] The Corporation maintains that the LPA's argument that there will be delays during the holiday period this year is hypothetical. I disagree. After seeing the statistics for 2008 to 2014, it seems likely that there will be delays caused by the unavailability of pilots during the holiday period this year. It is difficult to estimate the number of delays, but I expect that there will be some.

[11] He further added the following (Reasons, para. 33):

> [TRANSLATION]
>
> [33] Although the problem of delays of this type is not very serious and the resulting harm is minor, I agree that harm of this type is irreparable. It is understandable that preventable delays harm the LPA's reputation, which is an irreparable outcome: *RJR-Macdonald* at p. 341. For example, the LPA's clients affected by the delays caused by the unavailability of pilots may choose other options to ship their products in the future. Even though there is no proof that an LPA client has done this in the past, I think it is likely to have happened considering the number of delays in past years.

[12] The Corporation takes issue with that last passage, arguing that it contains a number of errors. Despite the fact that this aspect of the analysis is not as complete and solid as it might have been, I am unable to detect an error that would allow me to set aside the Federal Court judge's conclusion.

[13] In this regard, suffice it to say that the judge's inference to the effect that the delays harm the LPA's reputation is not speculative. Rather, it is a logical inference made on the basis of the evidence. I would add that the Federal Court judge's finding that the damage to the LPA's reputation is difficult to quantify appears to be consistent with what the Supreme Court set out in the passage from *RJR-MacDonald* referred to by the Federal Court judge. Moreover, contrary to the Corporation's assertion, I am of the view that there was sufficient evidence before the Federal Court judge for him to conclude that such harm did exist.

3rd branch: balance of convenience

[14] The Federal Court judge then turned his attention to the balance of convenience branch. After having indicated that the public interest favoured compliance with the contract signed on October 15, 2015 (Reasons, para. 39), he noted that [TRANSLATION] "the pilots likely made their arrangements for the 2015-2016 holiday period…a long time ago" (*ibidem*).

[15] With regard to any inconveniences experienced by the LPA, the Federal Court judge downplayed these while acknowledging their existence. Beyond the fact [TRANSLATION] "[t]hat there is a public interest in ensuring compliance with contracts" (Reasons, para. 38), the

Corporation's refusal to comply with its contractual obligations would cause delays, although those delays would be fewer than anticipated (Reasons, para. 40).

[16] Ultimately, it was maintaining what the Federal Court judge perceived to be the *status quo* that appears to have tipped the scale in the Corporation's favour (Reasons, para. 41):

> [TRANSLATION]
>
> [41] Each of the parties argues that the principle of maintaining the status quo goes in its favour. The Corporation maintains that the status quo means keeping the 2015 schedule, whereas the LPA contends that the status quo requires compliance with the new contract between the parties. I agree with the Corporation. The LPA asks that the Corporation be ordered to modify the 2015 schedule. <u>The status quo requires that I not impose such an order.</u> (Emphasis added.)

[17] In reaching this conclusion, the Federal Court judge erred with regard to the applicable legal rule. In order for the 2015 Schedule to represent the *status quo*, it would have required the Federal Court judge to have reached the opposite conclusion than the one he made with regard to the existence of a serious issue. Indeed, his conclusion was that the Corporation had been aware of the new requirements since June 2015 and that it had an obligation to meet those requirements from the moment the contract was signed, despite the 2015 Schedule. Therefore, the 2015 Schedule did not represent the *status quo* as the *status quo* was based on the requirements set out in the contract signed in October 2015.

[18] It follows that the only ground that favours the Corporation under the balance of convenience branch is that it would be [TRANSLATION] "inconvenient for pilots to have to change their arrangements…" for the 2015-2016 holiday period (Reasons, para. 39). This is no doubt true. However, the only reason this unfortunate situation exists, according to the Federal Court

judge's finding, is that the Corporation failed to draw up a new schedule on the basis of the new requirements as it should have under the terms of the contract it had signed. In raising this frustration, the Corporation is doing nothing more than making a claim based on its own turpitude.

[19] Given that this is the sole "inconvenience" selected by the Federal Court judge to tilt the balance against the LPA, it follows that the third branch also favours issuing the injunction sought.

[20] I therefore find that the appeal should be allowed, the order issued by the Federal Court judge set aside, and the order that he should have issued be issued according to the terms proposed by the LPA, subject to the date marking the start of the period covered by the interlocutory injunction being extended to December 26, 2015, in order to provide the Corporation with a suitable opportunity to comply. I am awarding the LPA its costs before this Court and before the Federal Court.

"Marc Noël"

Chief Justice

"I concur.
Richard Boivin, J.A."

"I concur.
Donald J. Rennie, J.A."

Translation

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

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