

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180123

**Dockets: A-69-17
A-174-17**

Citation: 2018 FCA 23

**CORAM: STRATAS J.A.
WEBB J.A.
BOIVIN J.A.**

Docket: A-69-17

BETWEEN:

ELIZABETH BERNARD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket: A-174-17

AND BETWEEN:

ELIZABETH BERNARD

Applicant

and

CANADA REVENUE AGENCY

Respondent

Heard at Ottawa, Ontario, on January 23, 2018.
Judgment delivered from the Bench at Ottawa, Ontario, on January 23, 2018.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on January 23, 2018).

STRATAS J.A.

[1] Before the Court are two applications for judicial review. In one (file A-69-17), the applicant seeks relief concerning the delay on the part of the Public Service Labour Relations and Employment Board in releasing its decision concerning a complaint she had made under the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2. In the other (file A-174-17), the applicant seeks to set aside the Board's decision dated May 1, 2017: 2017 PSLRB 46. In that decision, the Board dismissed the applicant's complaint.

[2] These are the Court's reasons in the applications. A copy of these reasons shall be filed in both court files.

[3] We consider the outcome reached by the Board in its May 1, 2017 decision to be reasonable. Putting aside the Board's decision on its jurisdiction to hear the applicant's complaint, the Board concluded that the applicant's complaint should be dismissed because it was essentially a reassertion of issues she raised or could have raised in earlier matters: see the reasons of the Board at paras. 79-81. Among these matters is the decision of the Supreme Court in *Bernard v. Canada (Attorney General)*, 2014 SCC 13, [2014] 1 S.C.R. 227 which broadly dealt with the issue of the disclosure of the applicant's home contact information, the essential

issue that was before the Board in the case at bar. The Board's decision to dismiss the applicant's complaint on this basis is both acceptable and defensible on the facts and the law: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47.

[4] We do not consider there to be any infringements of the applicant's procedural fairness rights in the hearing before the Board. There is also no evidence of actual or apparent lack of open-mindedness on the part of the Board and so the allegation of bias should not have been made: *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, 151 D.L.R. (4th) 193. The Board merely disagreed with the applicant's submissions.

[5] The applicant submits that the Board's interpretation of para. 186(1)(a) of the *Public Service Labour Relations Act* is inconsistent with subsection 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44. This relates to the Board's decision on the applicant's standing to make the complaint and its jurisdiction to hear it, an issue that we do not need to decide.

[6] In her application concerning the delay on the part of the Board in releasing its reasons on the complaint, the applicant sought *mandamus* requiring the Board to release its decision. After the application was made, the Board released its decision and so, as the applicant admitted during oral argument, the request for *mandamus* is now moot. In her submissions before us, the applicant is now seeking a declaration that the Board failed to meet its legal duty to render a timely decision on her complaint.

[7] We note that relief on judicial review is discretionary: *Mining Watch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6. We consider that no purpose would be served in issuing a declaration concerning the Board's delay in this matter. Reasons alone are sufficient to address the issues raised in this application. The Board's delay is regrettable and we consider that its determination of the applicant's complaint should have happened sooner. To the extent the delay was caused by inadequate resources and to the extent the Board needs more resources to fulfil its statutory mandate on a timely basis, it should demand them.

[8] Therefore, we shall dismiss the application in file A-174-17 with costs. We shall also dismiss the application in file A-69-17, but in the circumstances shall make no order as to costs.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-69-17 AND A-174-17

**TWO APPLICATIONS FOR JUDICIAL REVIEW CONCERNING THE DECISION OF
THE PUBLIC SERVICE LABOUR RELATIONS AND EMPLOYMENT BOARD
DATED MAY 1, 2017**

DOCKET: A-69-17

STYLE OF CAUSE: ELIZABETH BERNARD v.
ATTORNEY GENERAL OF
CANADA

AND DOCKET: A-174-17

STYLE OF CAUSE: ELIZABETH BERNARD v.
CANADA REVENUE AGENCY

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: JANUARY 23, 2018

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
WEBB J.A.
BOIVIN J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Elizabeth Bernard ON HER OWN BEHALF

Caroline Engmann FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada