

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20180629**

**Docket: A-205-17**

**Citation: 2018 FCA 126**

**CORAM: STRATAS J.A.  
NEAR J.A.  
WOODS J.A.**

**BETWEEN:**

**PEDRO SOUSA-DIAS**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Ottawa, Ontario, on June 20, 2018.

Judgment delivered at Ottawa, Ontario, on June 29, 2018.

**REASONS FOR JUDGMENT BY:**

**NEAR J.A.**

**CONCURRED IN BY:**

**STRATAS J.A.  
WOODS J.A.**

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**REASONS FOR JUDGMENT**

**NEAR J.A.**

**I. Outline**

[1] The applicant, Pedro Sousa-Dias, applies for judicial review of a decision of the Public Service Labour Relations and Employment Board (the Board) dated June 13, 2017 (*Sousa-Dias v. Treasury Board (Canada Border Services Agency)*, 2017 PSLREB 62). The applicant made a complaint under section 133 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the *Code*) and the

Board determined that the applicant was not subject to any discipline or threat of discipline related to exercising his right to refuse unsafe work under section 128 of the *Code*.

## II. Background

[2] The applicant is a Border Services Officer with the Canada Border Services Agency (CBSA). He alleged that it was unsafe for him to work alone at a particular location and refused to work pursuant to section 128 of the *Code*. Management then conducted an investigation as required by the *Code* and invited the applicant to a meeting to discuss the results.

[3] The applicant insisted that he bring a union representative to the meeting. CBSA management responded that he was not entitled to this because the meeting was not disciplinary and ordered the applicant to attend the meeting. The applicant arrived at the meeting and continued to insist that he was entitled to a representative. As a result of his behaviour at the meeting, he was sent home for the rest of the day with pay. He later received a one day suspension without pay for insubordination and disrespectful behaviour.

[4] The applicant filed a complaint with the Board under section 133 of the *Code* alleging that he was disciplined for exercising his right to refuse unsafe work under section 128, contrary to sections 147 and 147.1 of the *Code*.

## III. Board Decision

[5] The Board found that the complainant was not subject to any discipline or threat of discipline related to exercising his rights under section 128 of the *Code*. It explained that “there is no nexus between the work refusal and the conduct for which he was disciplined...His lack of

respect for the management at the POE [Port of Entry] was the true cause of the disciplinary action taken against him” (Board Decision at para. 130).

[6] The applicant filed a Notice of Application in this Court on July 7, 2017.

#### IV. Issue

[7] I would characterize the issue of the application as follows: was it reasonable for the Board to find that the applicant was not subject to discipline or threat of discipline as a result of exercising his rights under section 128 of the *Code*?

#### V. Standard of Review

[8] The applicant submits that certain matters addressed by the Board attract a standard of review of correctness. In particular, the applicant submits that the question of whether, pursuant to section 128 of the *Code*, the applicant had the right to be absent during the ongoing work refusal process and whether he had the right to union representation at any meeting that might have occurred with management as a result attracts correctness review. In making such a determination, the Board interpreted its home statute and applied its well-established expertise to the facts of this case. As such, it is entitled to considerable deference and the standard of review is reasonableness (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at para. 39, [2011] 3 S.C.R. 654; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 at paras. 22–23, [2016] 2 S.C.R. 293). As long as the decision demonstrates “justification, transparency and intelligibility within the decision making process” and “falls within a range of possible, acceptable outcomes which are defensible

in respect of the facts and law”, it must be regarded as reasonable (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190).

VI. Analysis

[9] Section 147 of the *Code* prohibits an employer from disciplining an employee for exercising her or his rights under that *Code*. The applicant argues that he was disciplined for refusing to attend a meeting that, in his view, he was not obligated to attend. The Board explained, citing its previous decision in *Nowoselsky v. Treasury Board (Solicitor General Canada)*, [1984] C.P.S.S.R.B. No. 120, that the applicant was required to attend the meeting as the order to do so was within his manager’s authority, the meeting did not pose a risk to his health or safety, and was legal (Board Decision at para. 128). However, in my view, nothing turns on this as the issue before this Court is whether it was reasonable for the Board to find that the applicant was disciplined for his disrespectful conduct and insubordination regardless of how he came to attend the meeting.

[10] Ultimately, the Board found as a fact that the applicant was aggressive toward his manager and “intended to assert his superiority over her and to embarrass her in front of another manager” (Board Reasons at para. 121). As the Board explained in its reasons, the applicant was disciplined for his lack of respect for the management at the POE and not for exercising his right to refuse to work: “there is no nexus between the work refusal and the conduct for which the complainant was disciplined” (Board Decision at para. 130).

[11] In large measure, the applicant asked this Court to rehear the matter and arrive at a different result. The applicant argues that the Board erred in preferring certain evidence. This

Court, however, does not conduct a new hearing or re-weigh evidence (*Sather v. Canada (Correctional Service)*, 2016 FCA 149 at paras. 10–11, 32 C.C.E.L. (4th) 132; *Gaudet v. Canada (Attorney General)*, 2013 FCA 254 at para. 9, [2013] F.C.J. No. 1189; *Adams v. Canada (Attorney General)*, 2013 FCA 165 at para. 8, 2013 CarswellNat 6913). In my view, the Board carefully considered the evidence before it and the arguments of both parties. It was entitled to make the credibility findings and reach the conclusion that it did and I see no reason to intervene in its decision.

VII. Conclusion

[12] I would dismiss the application with costs.

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"David G. Near"

J.A.

"I agree.  
David Stratas J.A."

"I agree.  
J. Woods J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**AN APPLICATION UNDER SECTION 18.1 OF THE FEDERAL COURTS ACT IN THE MATTER OF A DECISION BY MARGARET T.A. SHANNON, ACTING AS A PANEL OF THE PUBLIC SERVICE LABOUR RELATIONS AND EMPLOYMENT BOARD UNDER THE PUBLIC SERVICE LABOUR RELATIONS ACT (2017 PSLREB 62), IN DISMISSING COMPLAINTS. THE DECISION IS DATED JUNE 13, 2017.**

<b>DOCKET:</b>	A-205-17
<b>STYLE OF CAUSE:</b>	PEDRO SOUSA-DIAS v. AGC
<b>PLACE OF HEARING:</b>	OTTAWA, ONTARIO
<b>DATE OF HEARING:</b>	JUNE 20, 2018
<b>REASONS FOR JUDGMENT BY:</b>	NEAR J.A.
<b>CONCURRED IN BY:</b>	STRATAS J.A. WOODS J.A.
<b>DATED:</b>	JUNE 29, 2018

**APPEARANCES:**

Pedro Sousa-Dias (On his own behalf)	FOR THE APPLICANT
Joel Stelpstra	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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