

Date: 20050920

Docket: A-594-04

Citation: 2005 FCA 302

**CORAM: LÉTOURNEAU J.A.
ROTHSTEIN J.A.
MALONE J.A.**

BETWEEN:

CLYDE WILLIAMS

Applicant

and

**TEAMSTERS LOCAL UNION 938 and
PUROLATOR COURIER LTD.**

Respondents

Heard at Toronto, Ontario, on September 12, 2005.

Judgment delivered at Ottawa, Ontario, on September 20, 2005.

REASONS FOR JUDGMENT BY:

MALONE J.A.

CONCURRED IN BY:

**LÉTOURNEAU J.A.
ROTHSTEIN J.A.**

Date: 20050920

Docket: A-594-04

Citation: 2005 FCA 302

**CORAM: LÉTOURNEAU J.A.
ROTHSTEIN J.A.
MALONE J.A.**

BETWEEN:

CLYDE WILLIAMS

Applicant

and

**TEAMSTERS LOCAL UNION 938 and
PUROLATOR COURIER LTD.**

Respondents

REASONS FOR JUDGMENT

MALONE J.A.

I. Introduction

[1] This application for judicial review concerns a decision of the Canada Industrial Relations Board (the Board) dated October 18, 2004 (the Reconsideration decision). In that decision, the Board denied the applicant's request that it reconsider an earlier decision, dated April 26, 2004 (the Initial decision) in which the Board dismissed a "duty of fair representation" complaint brought by Mr. Williams against the Teamsters Local Union 938 (The Union). The

Board dismissed his complaint without a hearing after determining that such complaint did not raise a *prima facie* case against the Union.

II. Issue

[2] The essence of the applicant's request for reconsideration is that the Initial decision was formulaic and abstract and that the Board's reasons for decision were inadequate.

[3] For whatever reason, Mr. Williams did not seek judicial review of the Initial decision and the time limit for judicial review of that decision expired in May, 2004. Accordingly, following earlier decisions, this Court is not, during judicial review of a reconsideration decision, to review an initial decision of the Board. (See *Lamoureux v. Canadian Air Line Pilots Association*, [1993] F.C.J. No. 1128 (C.A.); *Sim v. Canada*, [1997] F.C.J. No. 1382 (C.A.)).

III. Standards of Review

[4] This Court has consistently held that Board decisions must be accorded the highest curial deference. In this case, all of the factors needed in a pragmatic and functional analysis lead to the conclusion that the Board's decision cannot be interfered with unless it is patently unreasonable (See *Dr. Q. v. College of Physicians and Surgeons of British Columbia* [2003] 1 S.C.R. 226). The one exception involves questions of procedural fairness where it is for the Court to provide the legal answer (See *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539 at paragraph 100).

[5] The standard of patent unreasonableness is very strict. A decision is not patently unreasonable simply because this Court may disagree with it. Rather, in order to be patently unreasonable, this Court must find that the Board's Reconsideration decision is clearly irrational. (See *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247 at paragraph 52).

IV. Analysis

[6] In reaching its Reconsideration decision the Board was required to follow section 44 of the *Canada Industrial Relations Board Regulations*, 2001, SOR/2001-520 (the Regulations). The basis on which the power of reconsideration is founded is clear; either the existence of new facts that could not have been brought to the Board's attention at the time it made its Initial decision, an error of law or policy or the failure of the original Board to respect a principle of natural justice.

[7] I am unable to say that the Board's Reconsideration decision was patently unreasonable. A request for reconsideration is neither an opportunity to obtain a new hearing nor is it an appeal. In conducting its review of the Initial decision, the reconsideration panel was not to substitute its own appreciation of the facts for that of the original panel. In this case, based on the facts before it, the original panel concluded that the Union was within its right not to pursue the matter further and there are no new facts or grounds now advanced by the applicant that would alter this conclusion.

[8] While it is unnecessary to do so, I will briefly address Mr. Williams' complaint that the initial panel did not satisfy its duty to provide reasons as required by *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 S.C.R. 817 at paragraph 43.

[9] Neither the *Canada Labour Code*, R.S.C. 1985, c. L-2, nor the Regulations require the Board to provide written reasons, however some form of reasons are required where the decision has important significance for the individual (see *Baker* at paragraph 43). In the present case, while the Initial decision was brief, the reasons adequately explain to Mr. Williams why the panel did not find that the union had breached its duty of fair representation.

[10] The Supreme Court of Canada has said that a union has considerable discretion in decisions involving the representation it provides to its members. An employee does not have an absolute right to arbitration but in refusing to proceed with a grievance a union must not act in an arbitrary or discriminatory manner or in bad faith (See *Canadian Merchant Service Guild v. Guy Gagnon et al.*, [1984] 1 S.C.R. 509 at 527).

[11] In this case, the panel was satisfied that the Union had considered his grievance and did not act in an arbitrary or discriminatory fashion or in bad faith. Once the employer denied the grievance the Board determined that it was within the Union's legal rights to refuse to pursue the grievance any further. Nothing more was required from the Board in its written reasons following the principles established in the *Canadian Merchant Service Guild* case.

[12] The application for judicial review should be dismissed. The Union requested costs and costs should be awarded.

“B. Malone”

J.A.

“I agree
Gilles Létourneau
J.A.”

“I agree
Marshall Rothstein
J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-594-04

STYLE OF CAUSE: CLYDE WILLIAMS
Applicant

- and -

TEAMSTERS LOCAL UNION 938 and
PUROLATOR COURIER LTD.
Respondents

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: Monday, September 12, 2005

REASONS FOR JUDGMENT BY: Malone J.A.

CONCURRED IN BY: Létourneau J.A.
Rothstein J.A.

DATED: September 20, 2005

APPEARANCES BY:

Mr. Joseph Markin For the Applicant

Mr. Howard Goldblatt For the Respondents

SOLCITIORS OF RECORD

Joseph Markin For the Applicant
Barrister & Solicitor
Toronto, Ontario

Sack Goldblatt Mitchell For the Respondents
Barristers & Solicitors
Toronto, Ontario