

Date: 20051129

Docket: A-622-04

Citation: 2005 FCA 402

**CORAM: ROTHSTEIN J.A.
NADON J.A.
PELLETIER J.A.**

BETWEEN:

**British Columbia Terminal Elevator Operator=s Association
as Authorized by its member employers Pacific Elevators Limited,
United Grain Growers Limited d.b.a. Agricore United, Saskatchewan Wheat Pool,
James Richardson International Limited, and Cascadia Terminal**

Applicant

and

**Grain Workers= Union, Local 333 and
Prince Rupert Grain Ltd.**

Respondents

Heard at Vancouver, British Columbia on November 29, 2005.

Judgment delivered from the Bench at Vancouver, British Columbia on November 29, 2005.

REASONS FOR JUDGMENT OF THE COURT BY: PELLETIER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia on November 29, 2005)

PELLETIER J.A.

[1] We have concluded that we will not hear the judicial review of the Board=s decision on the ground that it is premature.

[2] The jurisprudence of our court and that of the Supreme Court of Canada is clear that judicial review of interlocutory decisions of administrative tribunals should only be undertaken in

exceptional circumstances. One of the considerations underlying that position is the delay and uncertainty introduced into proceedings by the recourse to the Court before the tribunal has had the opportunity to complete its mandate. In the present case, we are mindful of the fact that there is a hearing date scheduled in the relatively near future.

[3] The grounds advanced by the applicant as justifying our intervention at an interlocutory stage are that the Board=s decision with respect to res judicata is incorrect, that there are two jurisdictional issues, issues which can be raised at any time, and that the inadequacy of the Board=s reasons has resulted in a denial of natural justice.

[4] The fact that a litigant disagrees with the Board=s decision on an interlocutory matter is not itself a special consideration. If it were, the practice of restrained intervention would be meaningless. The Board=s decision on the issue of res judicata, and in particular its alleged failure to address the applicant's arguments on this issue, does not preclude the applicant from making the same arguments before the Board at the hearing on the merits as it did before the panel which decided PRG 2002 as to whether statutory criteria in s. 35 have been satisfied. To that extent, the applicant's position on the merits has not been prejudiced and we are not justified in intervening at this point.

[5] With respect to the jurisdictional issues raised by the applicant, we are mindful of the admonitions of the Supreme Court with respect to the issue of jurisdictional questions. The

following passage from *International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514 v. Prince Rupert Grain Ltd.* [1996] 2 S.C.R. 432 is apposite:

Parliament and provincial legislatures have clearly indicated that decisions of these boards on matters within their jurisdiction should be final and binding. The courts could all too easily usurp the role of these boards by characterizing the empowering legislation according to them authority as jurisdiction limiting provisions which would require their decisions to be correct in the opinion of the court. Quite simply, courts should exercise deferential caution in their assessment of the jurisdiction of labour boards and be slow to find an absence or excess of jurisdiction.

As the argument before us demonstrated, there is no bright line test for jurisdictional issues. Bearing in mind the Supreme Court's admonition, we are not satisfied that the matters raised by the applicant would justify our intervention at an interlocutory stage.

[6] Finally, we are not persuaded that the adequacy of the reasons raises an issue of natural justice which would justify our intervention at an interlocutory stage.

[7] In the circumstances, the application for judicial review will be dismissed with costs to be spoken to. The application for a stay of the Board's hearing is now moot and will be dismissed as well.

(Sgd.) A.J.D. Denis Pelletier@
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-622-04

STYLE OF CAUSE: B.C. Terminal Elevator Operators=
Assoc. et al. v. Grain Workers
Union et al.

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: November 29, 2005

REASONS FOR JUDGMENT: Pelletier, J.A.

DATED: November 29, 2005

APPEARANCES:

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Ms. Gina Fiorillo Mr. William Clements	F OR THE RESPONDENT GRAIN
Mr. Alan Francis	FOR THE RESPONDENT PRINCE Ms. Koml Kandola RUPERT GRAIN

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