

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20180910**

**Docket: A-424-17**

**Citation: 2018 FCA 160**

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

**BETWEEN:**

**MORRIS TIMOTHY KLOS**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Vancouver, British Columbia, on September 10, 2018.  
Judgment delivered from the Bench at Vancouver, British Columbia, on September 10, 2018.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**BOIVIN J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on September 10, 2018).**

**BOIVIN J.A.**

[1] Mr. Klos seeks judicial review of a decision of the Federal Public Sector Labour Relations and Employment Board (the Board) dated November 29, 2017 (2017 FPSLREB 41). In that decision, the Board determined that it lacked jurisdiction to hear a grievance filed by Mr. Klos on July 18, 2016.

[2] Specifically, the Board found that the grievance did not relate to disciplinary matters and was never presented as disguised discipline. As such, it could only be referred to adjudication pursuant to paragraph 209(1)(a) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s.2 (the Act). Also, and as required by subsection 209(2) of the Act, this referral required the support of the applicant's bargaining agent, which he did not have. The Board further noted that the grievance had to be adjudicated as originally filed and that changing the fundamental nature of a grievance at the adjudication level was not permitted (*Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.) (QL)).

[3] We are all of the view that the Board's decision is reasonable. The decision describes the grievance over which the adjudication is being sought, reviews the parties' positions and provides reasons for its conclusions. It meets the requirements of justification, transparency and intelligibility and falls within the range of reasonable outcome that are defensible in respect of the facts and the law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47). We also see no procedural unfairness.

[4] Given our conclusion, there is no need to adjudicate upon the applicant's motion that we substitute our decision for that of the Board's.

[5] For these reasons, the application for judicial review will be dismissed with costs.

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"Richard Boivin"

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-424-17

**STYLE OF CAUSE:** MORRIS TIMOTHY KLOS v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH  
COLUMBIA

**DATE OF HEARING:** SEPTEMBER 10, 2018

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

**DELIVERED FROM THE BENCH BY:** BOIVIN J.A.

**APPEARANCES:**

Morris Timothy Klos FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Cristina St-Amant-Roy FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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