

Date: 20070515

Docket: A-426-06

Citation: 2007 FCA 191

**CORAM: LÉTOURNEAU J.A.
NOËL J.A.
PELLETIER J.A.**

BETWEEN:

GÉRARD MÉNARD

Applicant

and

**ATTORNEY GENERAL OF CANADA,
CANADIAN UNION OF POSTAL WORKERS
and
CANADA POST**

Respondents

Hearing held at Montréal, Quebec, on May 14, 2007.

Judgment delivered at Montréal, Quebec, on May 15, 2007.

REASONS FOR JUDGMENT BY THE COURT

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REASONS FOR JUDGMENT

BY THE COURT

[1] This is an application for judicial review of a decision dated September 6, 2006, by the Canada Industrial Relations Board (Board). In that decision, the Board dismissed the applicant's complaint against his union, the Canadian Union of Postal Workers (union). This complaint alleged

that the union breached its duty of fair representation when it refused to apply for judicial review of the arbitral award issued September 22, 2004, which upheld his dismissal by the Canada Post Corporation.

[2] The applicant represented himself in those proceedings. He also represented himself at the hearing and made oral submissions. We endeavoured to assist him by explaining the limits of our jurisdiction with respect to his claims and the remedies he wanted to obtain from our Court.

[3] The applicant seeks the following relief, as set out in his memorandum of fact and law:

[TRANSLATION]

- (a) That this Honourable Court allow the application for judicial review and cancel and set aside the decision of the Board dated the 6th of September 06;
- (b) That this Honourable Court grant leave for judicial review of the arbitral award by requiring the union to provide me with counsel of my choice and to pay his or her fees, costs and expenses to represent me, or that the Court restore the situation that existed before my unlawful dismissal by setting aside the dismissal and reinstating me in my position with full compensation or that the Court make any other order that it deems appropriate and fair, having regard to the circumstances of this case; and
- (c) That this Honourable Court order that each party bear their own costs of this application for judicial review.

[4] We explained to the applicant that our Court does not have jurisdiction to grant the relief sought in paragraph (b) since the application for judicial review deals with the legality of the Board's decision with respect to the union's duty of representation.

[5] In his oral argument, the applicant nonetheless challenged the legality of the arbitral award thoroughly and at length, as he had done before the Board. Like the Board (see pages 5 and 6 of the Board's decision), we told the applicant that we are not a court of appeal for this arbitral award.

[6] In the context of this judicial review, the arbitral award could conceivably be relevant if it were, on its face, so patently unreasonable, arbitrary and biased that it could seriously call into question either the correctness of the union's decision to not seek judicial review or the representation provided by the union to the applicant at the hearing before the arbitrator.

[7] The Board considered the applicant's allegations that there was collusion between the union, the employer and the grievance arbitrator and that the union acted in bad faith and was negligent in not requesting a second legal opinion as to the appropriateness of challenging the arbitral award.

[8] The Board considered the role of the union and the limits of its duty of representation to the applicant. After analyzing the documentary evidence and the parties' submissions, the Board found the applicant's allegations to be unfounded. At pages 6 and 7 of its decision, the Board wrote:

... [i]t is important to note that the Board will not substitute its own decision for that of the union or act as a court of appeal for union decisions (see *Fred Blacklock et al.*, [2001] CIRB no. 139; *Yvonne Misiura*, [2000] CIRB no. 63, and CLRBR (2d) 305; and *Anthony William Amor* (1987), 70 di 98 (CLRB no. 633)).

...

In this case, the complainant alleges that there was collusion between the parties and that the union did not thoroughly examine the arbitral award. However, the documents submitted do not demonstrate to the Board that the union acted in a manner that was arbitrary, discriminatory or in bad faith. Rather, the evidence on record shows that the union seriously examined the arbitral award, without hostility toward the complainant. The union made its decision only after consulting its lawyer and assessing the chances of success with such an application. With regard to the allegations of collusion, the arguments made are merely the complainant's suspicions and personal beliefs.

[9] Beyond the applicant's disagreement with the findings of fact and law made by the arbitrator and the Board, we have not been persuaded that the Board made an error that would justify our intervention.

[10] At the hearing, the applicant asked for leave to submit two appendices (appendices D and E) that, he says, had been brought to the Board's attention. Counsel for the union objected. The Court reserved judgment on the request.

[11] The two appendices essentially consist of supplementary arguments and they add nothing to what is already in the docket. We would admit them as part of the applicant's record in which they had already been inserted.

[12] For these reasons, the application for judicial review will be dismissed with costs in favour of the respondents the Canadian Union of Postal Workers and Canada Post.

“Gilles Létourneau”

J.A.

“Marc Noël”

J.A.

“J.D. Denis Pelletier”

J.A.

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-426-06

STYLE OF CAUSE: Gérard Ménard v. Attorney
General of Canada *et al.*

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 14, 2007

REASONS FOR JUDGMENT BY: THE COURT

DATED: May 15, 2007

APPEARANCES:

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(representing himself)

FOR THE APPLICANT

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FOR THE RESPONDENT THE
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