

Date: 20080513

Docket: A-204-07

Citation: 2008 FCA 183

**CORAM: DESJARDINS J.A.
SEXTON J.A.
EVANS J.A.**

BETWEEN:

KASIA KOWALLSKY

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Heard at Vancouver, British Columbia, on May 13, 2008.

Judgment delivered from the Bench at Vancouver, British Columbia, on May 13, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on May 13, 2008)

EVANS J.A.

[1] This is an application for judicial review by Kasia Kowallsky to set aside a decision by the Public Service Labour Relations Board (2007 PSLRB 30), in which the Board, comprising a single member, dismissed a complaint by Ms Kowallsky that her bargaining agent, the Public Service Alliance of Canada (PSAC) had breached the duty of fair representation imposed by section 187 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22.

[2] Ms Kowallsky has been employed by Citizenship and Immigration Canada (CIC) since 1997. She is dissatisfied with the employer's failure to reclassify the position that she once occupied as a Client Service Representative (CSR), and with its determination that she was not eligible for a CR-05 position because, as a CSR, she lacked relevant experience. Following the reorganization of positions at the Vancouver Call Centre of CIC, Ms Kowallsky was redeployed to a CR-04 position with CIC, a lower position than that of a CR-05 for which she had been found ineligible.

[3] Ms Kowallsky took her various complaints about the employer to PSAC, which did not deal with them to her satisfaction. The aspect of her complaint about PSAC most germane to this application is that PSAC refused to take to adjudication her grievance that CIC had failed to provide her with a complete and accurate work description of the CSR position, as required by the collective agreement. She believes that an accurate job description would disclose that she was eligible for a CR-05 position. Ms Kowallsky says that PSAC did not adequately investigate her complaint about CIC's conduct and acted in bad faith.

[4] After reciting at length the submissions of the parties and reviewing the evidence, the Board concluded that Ms Kowallsky had failed to establish that PSAC's refusal to take her grievance to adjudication was arbitrary or discriminatory, or in bad faith. The Board found that the PSAC officials dealing with Ms Kowallsky's complaints about the employer had carefully investigated the facts and, in good faith, had formed the view that the grievance was without merit, particularly since Ms Kowallsky had failed to provide PSAC with information needed to substantiate the grievance. The Board accepted PSAC's submission that, while the collective agreement required that

employees be provided with an accurate job description, it did not prescribe the format of the description. The Board also dismissed other aspects of Ms Kowallsky's complaints against PSAC as either untimely or outside the scope of the duty of fair representation.

[5] It is important to emphasize two factors which severely limit the ability of this Court to intervene in the Board's decision. First, the Board's decisions are protected by a strong preclusive clause: *Public Service Labour Relations Act*, section 51. This provision precludes the Court from reviewing decisions of the Board for erroneous findings of fact and errors of law, pursuant to paragraphs 18.1(4)(c) and (d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. Consequently, Ms Kowallsky can only succeed in her application if she establishes that the Board's decision was made in excess of its jurisdiction or in breach of its duty of fairness, or was vitiated by fraud or perjury.

[6] Second, bargaining agents have considerable latitude in determining whether to take a grievance to adjudication or arbitration. It is not the function of the Board on a complaint of a breach of the duty of fair representation merely to decide whether it agrees with the bargaining agent's assessment of the merits of a complaint by a member of the bargaining unit that the employer is in breach of the collective agreement. Much less is this the function of this Court on an application for judicial review of the Board's disposition of a complaint under section 187.

[7] In our opinion, Ms Kowallsky has not established that the Board committed a jurisdictional error (fraud or perjury is not alleged) in dismissing her complaint against PSAC. Before us, Ms Kowallsky, who represented herself, was largely concerned to identify what she submitted were the

Board's errors or misunderstandings of the underlying facts. However, because of the preclusive clause, the Board's factual findings are not reviewable under paragraph 18.1(4)(d) in this proceeding. We see no basis in the record to support Ms Kowallsky's claim of bad faith or discrimination on the part of PSAC or its officials in dealing with her complaints against the CIC.

[8] Ms Kowallsky also alleges that the Board's decision was made in breach of the duty of fairness. First, she says that the Board's reasons are inadequate because they do not refer to the evidence which she adduced, and do not adequately explain why it was dismissing her complaint. True, the analysis section of the Board's reasons is brief. However, the basis of the decision is clear when the reasons are read as a whole, including the lengthy description of the parties' positions. The Board accepted, on the basis of the material before it, that PSAC had decided not to take the grievance to adjudication because it was satisfied that the job description was accurate and that Ms Kowallsky had not provided the information necessary to show otherwise. It found also that PSAC was warranted in thinking that, while the collective agreement prescribed the content of job descriptions, it did not require that they be in a particular format. It was not necessary on the facts of this case for the Board to have dealt expressly in its reasons with each and every of the many bases of the allegations made against PSAC by Ms Kowallsky.

[9] Second, Ms Kowallsky says in her written submissions to the Court that the Board member had been employed by PSAC and that this gave rise to a reasonable apprehension of bias. We disagree. The employment relationship had ended eight years before he heard the case and there was no allegation that he had acquired knowledge of Ms Kowallsky's case during his employment by

PSAC. In our opinion, a reasonable, informed person would not conclude, having thought the matter through in a practical manner, that, because of his previous employment by PSAC, the Board member was unable to determine impartially Ms Kowallsky's complaint against PSAC.

[10] Finally, we see no jurisdictional error in the Board's dismissal of the other aspects of Ms Kowallsky's complaint against PSAC under section 187.

[11] For these reasons, the application for judicial review will be dismissed, without costs.

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-204-07

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CANADA

PLACE OF HEARING: Vancouver, B.C.

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DELIVERED FROM THE BENCH BY: EVANS J.A.

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