Date: 20081222

Dockets: A-237-07
A-583-06

Citation: 2008 FCA 415

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

A-237-07

BETWEEN:

DIMITRIOS PAPADOPOULOS

Applicant

and

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA
and
CORUS ENTERTAINMENT INC.

Respondents

A-583-06

BETWEEN:

DIMITRIOS PAPADOPOULOS

Applicant

and

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA
and
CORUS ENTERTAINMENT INC.

Respondents

Heard at Montréal, Quebec, on November 19, 2008.

Judgment delivered at Ottawa, Ontario, on December 22, 2008.

REASONS FOR JUDGMENT BY: BLAIS J.A.

CONCURRED IN BY: NADON J.A.
PELLETIER J.A.

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REASONS FOR JUDGMENT

BLAIS J.A.

[1] The applicant filed a complaint against the respondent, Communications, Energy and Paperworkers Union of Canada (the Union), with the Canada Industrial Relations Board (the Board). The complaint alleged that the Union infringed on section 37 of the *Canada Labour Code* (the Code), which states that a union shall not act in a manner that is arbitrary, discriminatory or in bad faith towards any of the employees in the bargaining unit it represents.

[2] After having given the parties the opportunity to state their positions in writing and submit the documentary evidence they deemed relevant, the Board issued a decision on December 5, 2006.

[3] On April 12, 2007, subsequent to the applicant's filing a reconsideration application with the Board, the Board issued a new decision dismissing the applicant's reconsideration application after it had given the parties the opportunity to state their respective positions on the issue.

[4] The applicant then filed two applications for judicial review of the Board's two decisions, which are the subject of the decision at hand.

[5] The recent decision by the Supreme Court of Canada in *Dunsmuir v. New-Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 (QL), teaches us that the applicable standards of review have now been reduced to the standards of correctness and reasonableness.

[6] The parties have agreed, correctly in my opinion, that the standard of review applicable in the analysis of this case is reasonableness. However, in the analysis of the issue of whether a rule of natural justice has been breached, the Court will apply the standard of correctness.

[7] The Court intends to first dispose of the applicant's allegation that the Board failed to observe the rules of natural justice in its analysis of the application. I have reviewed in detail the extensive documentary evidence before the Board both at the time of its original decision issued in December 2006 and upon reconsideration of its original decision in its April 2007 decision.

[8] The applicant claims that there was a breach of procedural fairness because his record as on file at the Board's office in Montréal did not contain all of the evidence included in his record at the Board's office in Ottawa. On that basis, the applicant alleges that the Board decided his case without having taken all of the evidence on record into account. That allegation presupposes that the Board issued its two decisions on the basis of the record as constituted in Montréal. That argument cannot succeed, because the Board submitted a certified copy of its record to the Court, that is, the record it considered when issuing its two decisions. In the absence of evidence that the record is incomplete, the applicant's argument must be dismissed.

[9] The applicant has failed to persuade me that the Board breached a rule of natural justice in either its original decision or its reconsideration. In my opinion, the Board was able to review the entire record before it, and the certified copy of the record was submitted in its entirety for this Court to review.

[10] As for the applicant's complaint, the record before the Board shows that the applicant received a memorandum from the employer indicating that the night shift would be abolished, which had a direct impact on the applicant's employment conditions, and that he complained about these changes on December 6, 2004. That same day, the chief steward of the Union that is a respondent in the case at bar answered the complaint by e-mail and responded to each of the alleged violations of the Collective Agreement section by section, explaining the Union's position.

[11] The union representative concluded that there was no basis for the applicant's claim in the Collective Agreement, but offered the applicant her subsequent support.

[12] Over two months later, on February 11, 2005, the applicant notified his union that he intended to file a grievance alleging constructive dismissal.

[13] The union representative once again responded in detail to each of the applicant's allegations, explaining why the Union believed that it was not advisable to file a grievance with almost no chance of succeeding.

[14] The proposed grievance was not pursued and therefore not filed. The applicant, who had initiated discussions directly with the employer by letter on February 11, 2005, reached an agreement directly with his employer less than three weeks after his discussion with the union representative.

[15] It was not possible to know the details of the agreement between the applicant and the employer on account of the agreement's confidentiality. It is therefore impossible to know which aspects of the grievance may not have been settled.

[16] Upon reading both the December 2006 decision and the April 2007 reconsideration decision, I am satisfied that the Board conducted a meticulous review of the evidence before it and referred to a large number of materials and arguments submitted by each party.

[17] Moreover, I believe the Board's decisions are completely reasonable in the circumstances, considering the evidence that was before it.

[18] Section 37 of the Code states that a union agent shall not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employees or the bargaining unit.

[19] Despite the serious accusations made by the applicant, it appears that the union representatives reacted promptly to the applicant's allegations and clearly and specifically explained why the Union concluded that there was no basis for most of the points raised by the applicant.

[20] The Board found that the Union took all of the necessary steps to review the applicant's claim before deciding against supporting the proposed grievance.

[21] Recently, in *Télé-Mobile Co. v. Telecommunications Workers Union*, 2004 FCA 438, [2004] F.C.J. No. 2123 (QL), this Court stated the following at paragraphs 46 and 47:

> 46 Labour boards in Canada are among the most senior of our administrative tribunals, and are regarded as possessing a broad mandate and matching expertise in the regulation of labour relations. The strong preclusive clauses typically found in their enabling legislation further indicate a legislative intention that in judicial review proceedings courts should afford labour board decisions a high degree of deference. These observations apply fully to the Canada Industrial Relations Board.
>
> 47 It is unnecessary to conduct a full pragmatic and functional analysis each time a labour board decision comes for judicial review: there is a broad consensus about the status of labour boards, the scope of their mandate and expertise, and the general purposes of the Code. In addition, strong privative clauses are typically included in their enabling legislation. The inquiry can thus focus principally on the nature of the question in dispute and whether it is within the scope of the Board's expertise. Here, too, settled jurisprudence avoids the need for reviewing courts constantly to reinvent the wheel: labour boards' decisions based on an interpretation of their constitutive, and closely related, legislation are normally reviewable only for patent unreasonableness, even when the statutory provision in dispute also has a more general legal meaning . . . .
>
> (Emphasis added)

[22] Regarding the Board's reconsideration decision, this Court has also delivered a decision in a case that took the same procedural route: *Williams v. Teamsters Local Union 938*, 2005 FCA 302, [2005] F.C.J. No. 1550 (QL). In that case, Mr. Williams had filed a complaint against his union, also under section 37 of the Code, which was dismissed. A reconsideration application was also filed and dismissed. In his decision dismissing the judicial review, Justice Nadon writes:

> 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.
>
> (Emphasis added.)

[23] Justice Nadon then adds the following at paragraph 7:

> 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.

[24] In the decision before this Court, the Board states the following at page 4:

> [TRANSLATION]
>
> The reconsideration panel notes that most of the applicant's submissions contain arguments that are identical or similar to those made to the original panel. This attempt to reopen the case for debate does not constitute grounds for reconsideration.

[25] In the absence of evidence of new facts, the Board was correct to deny reconsideration. As far as I am concerned, the Board's findings are completely reasonable in the circumstances.

[26] I would dismiss both applications for judicial review, with costs; specifically, the application for judicial review of the Canada Industrial Relations Board's original decision, dated December 5, 2006, and that of its reconsideration decision, dated April 12, 2007.

[27] These reasons will apply to Court files A-237-07 and A-538-06.

"Pierre Blais"

J.A.

"I agree.
M. Nadon J.A."

"I agree.
J.D. Denis Pelletier J.A."

Certified true translation
Sarah Burns

FEDERAL COURT OF APPEAL
SOLICITORS OF RECORD

DOCKETS: A-237-07 and A-583-06

STYLES OF CAUSE: A-237-07

DIMITRIOS PAPADOPOULO v. COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA and CORUS ENTERTAINMENT INC.

A-583-06

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PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	November 19, 2008
REASONS FOR JUDGMENT BY:	Blais J.A.
CONCURRED IN BY:	Nadon J.A. Pelletier J.A.
DATED:	December 22, 2008

APPEARANCES:

Dimitrios Papadopoulos	Representing himself
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Patrick Glaude	For the respondent, Corus Entertainment Inc.

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