

Cour d'appel  
fédérale



Federal Court  
of Appeal

**Date: 20110310**

**Docket: A-305-10**

**Citation: 2011 FCA 94**

**CORAM: BLAIS C.J.  
SHARLOW J.A.  
STRATAS J.A.**

**BETWEEN:**

**ALGOMA CENTRAL MARINE,  
A DIVISION OF ALGOMA CENTRAL CORPORATION**

**Applicant**

**and**

**CAPTAINS AND CHIEFS ASSOCIATION**

**Respondent**

Heard at Toronto, Ontario, on March 10, 2011.

Judgment delivered from the Bench at Toronto, Ontario, on March 10, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on March 10, 2011)

**SHARLOW J.A.**

[1] The applicant (“Algoma”) has applied for judicial review of the decision of the Canada Industrial Relations Board dated April 9, 2010 (2010 CIRB 531) certifying the respondent Captains and Chiefs Association as the bargaining agent for a unit comprising:

“all regular and reserve Captains/Masters and Chief Engineers employed by Algoma Central Marine, a Division of Algoma Central Corporation, on vessels owned, operated or under bareboat charter, or otherwise effectively controlled by Algoma Central Marine directly or indirectly, excluding Training Captains and Training Chief Engineers”.

[2] The issue before the Board was whether the captains and chief engineers employed on Algoma's vessels are eligible to be included in a bargaining unit. Algoma argued that they are not eligible because they perform management functions and therefore do not meet the definition of "employee" in section 3 of the *Canada Labour Code*, R.S.C. 1985, c. L-2.

[3] The standard of review in this case is reasonableness (*International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514 v. Prince Rupert Grain Ltd.*, [1996] 2 S.C.R. 432 at paragraph 28). Thus, the question before this Court is whether the decision of the Board is intelligible and justifiable, and falls within a range of possible, acceptable outcomes (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9 at paragraph 47).

[4] Algoma does not suggest that there is any error in the summary of the relevant law set out in paragraphs 5 to 11 of the Board's reasons. Nor does Algoma take issue with any of the Board's findings of fact. Rather, Algoma argues that, given the facts as found by the Board, it was unreasonable for the Board to conclude that the captains and chief engineers employed on Algoma's vessels do not perform management functions.

[5] There is room for debate as to whether, in general or theoretical terms, the captain or chief engineer of a vessel performs management functions. However, in the context of applications for the certification of bargaining units, the Board must deal with that question on a case by case basis, considering all of the relevant evidence, informed by labour relations principles.

[6] The Board's reasons in this case are detailed, thorough and cogent. The Board explains clearly why it concluded that the captains and chief engineers employed on Algoma's vessels fall within the statutory definition of "employee", notwithstanding their important legal and supervisory obligations and functions. Despite the able and thorough submissions of counsel for Algoma, we are not persuaded that there is any basis for finding the decision of the Board to be unreasonable.

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

"K. Sharlow"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-305-10

**(AN APPLICATION FOR JUDICIAL REVIEW OF THE ORDER OF THE CANADA INDUSTRIAL RELATIONS BOARD, #9839-U, DATED APRIL 9, 2010, IN FEDERAL COURT FILE NO. T-710-10)**

**STYLE OF CAUSE:** ALGOMA CENTRAL MARINE, A  
DIVISION OF ALGOMA  
CENTRAL CORPORATION v.  
CAPTAINS AND CHIEFS  
CORPORATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 10, 2011

**REASONS FOR JUDGMENT OF THE COURT BY:** BLAIS C.J., SHARLOW &  
STRATAS JJ.A.

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

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