

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120917

Docket: A-96-12

Citation: 2012 FCA 236

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

BETWEEN:

SANDRA HUGHES

Applicant

and

**CANADIAN AIRPORT WORKERS UNION
(CAWU STCA Canada) AND
GARDA SECURITY SCREENING INC.**

Respondents

Heard at Toronto, Ontario, on September 17, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on September 17, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario on September 17, 2012)

STRATAS J.A.

[1] This is an application for judicial review of a decision of the Canada Industrial Relations Board dated October 4, 2011 (CIRB LD 2649) and, with leave, a reconsideration decision dated December 8, 2011 (CIRB LD 2685).

[2] In these decisions, the Board dismissed the applicant's complaint that her union failed to refer to arbitration her grievance. Her grievance concerned her demotion from a full-time position to a part-time position, and her assignment as a Level III Screener following her transfer to the Toronto Pearson International Airport. The applicant alleged that the union breached its duty of fair representation and acted arbitrarily, discriminatorily and in bad faith.

[3] In its first decision, after carefully reviewing the facts and the parties' arguments, the Board ruled as follows:

Based on the facts presented, the Board is unable to find that the union has treated the complainant in a manner that was arbitrary, discriminatory or in bad faith with respect to her rights under the collective agreement.

The Board finds that the union did what it was required to do in the circumstances. The union made a reasoned decision not to pursue the complainant's grievance and communicated that decision to the complainant.

[4] In its reconsideration decision, the Board declined the applicant's request for reconsideration, analyzing, among other things, her rights under the relevant collective agreement. It concluded that there was nothing in the file before it to suggest that the union did anything other than apply well-known labour law principles to the situation of the applicant.

[5] In this Court, the applicant attacks the Board's decisions on a number of substantive and procedural grounds.

[6] At the outset of the hearing in this Court, the applicant sought to adduce evidence of events that took place after the Board's decisions. We ruled the evidence inadmissible as it is not relevant to the issues before us.

[7] The applicant accepts that on substantive grounds the standard of review is reasonableness. In her written submissions, and to some extent in her oral submissions, the applicant alleges that the decisions are unreasonable because the Board made perverse findings of fact, wrongly assumed certain facts, overlooked certain evidence, did not explain why it rejected certain evidence, did not make certain factual inferences, wrongly interpreted the collective agreement, and failed to give appropriate weight to certain evidence.

[8] In substance, the applicant invites us on judicial review to reweigh the evidence and substitute our findings of fact for those of the Board. The applicant's submissions smack of an invitation to this Court to retry the factual merits of this matter before the Board. This is not our task under reasonableness review, a standard of review that requires us to be deferential.

[9] Having examined both the record that was before the Board and the Board's reasons for its decisions, we consider that the Board reached an outcome that was acceptable and defensible on the facts and the law before it. The Board had an acceptable and defensible basis for finding that the union did not act discriminatorily, arbitrarily or in bad faith. The Board's decisions pass muster under reasonableness review.

[10] In her procedural attack against the Board's decisions, the applicant submits that the Board should have held an oral hearing into the matter, rather than deciding it on the basis of written materials and written submissions.

[11] In our view, the Board did not err in proceeding in the way it did. First, its reasons expressly show that it reviewed all of the material on file and considered it. Second, aware of the legal and factual issues before it, the Board concluded that an oral hearing was unnecessary. The applicant has not persuaded us that the Board erred in reaching this conclusion.

[12] The applicant also submitted that the Board's reasons were inadequate and failed to require the union to produce relevant documents. In our view, there is no merit to these submissions.

[13] Therefore, we shall dismiss the application with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-96-12

(APPEAL FROM AN APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE CANADA INDUSTRIAL RELATIONS BOARD, DATED OCTOBER 4, 2011)

STYLE OF CAUSE: SANDRA HUGES V CANADIAN AIRPORT WORKERS UNION (CAWU STCA Canada) AND GARDA SECURITY SCREENING INC.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 17, 2012

REASONS FOR JUDGMENT OF THE COURT BY: (NADON, DAWSON & STRATAS J.J.A.)

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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