

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130417

Docket: A-364-12

Citation: 2013 FCA 106

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

BETWEEN:

CANADIAN AIRPORT WORKERS UNION

Applicant

and

GARDA SECURITY SCREENING INC.

Respondent

and

**INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS**

Respondent

Heard at Toronto, Ontario, on April 17, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on April 17, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

NEAR J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on April 17, 2013)

NEAR J.A.

[1] This application for judicial review of the Canada Industrial Relation Board's ("the Board") July 20, 2012 reconsideration decision (2012 CIRB 651 ("the 651 Decision")) is the latest in a series of challenges brought by the Applicant – the Canadian Airport Workers Union ("the CAWU") – to the results of a representation vote conducted by the Board in March 2012. By way of these

challenges, the CAWU contests its displacement as bargaining agent for a unit of employees of the Respondent Garda Security Screening Inc. by the Respondent International Association of Machinists and Aerospace Workers.

[2] While the application purports to be for judicial review of the Board's most recent decision, the 651 Decision, the CAWU's submissions go to the substance of all of the decisions rendered by the Board in this matter.

[3] When reviewing a tribunal's reconsideration decision, this Court has long held that it will not look at the decision – or decisions – sought to be reconsidered (see *Lamoureux v. Canadian Air Line Pilots Assn.*, [1993] F.C.J. No. 1128 [*Lamoureux*] at para. 2). Furthermore, the prescribed time limits set out in the *Federal Courts Act*, R.S.C., 1985, c. F-7 have passed. The only decision properly before this Court is thus the 651 Decision. Accordingly, all of the CAWU's submissions relating to decisions other than the 651 Decision are dismissed as untimely collateral attacks on those prior decisions.

[4] In its application for judicial review of the 651 Decision, the CAWU submits that the Board erred in failing to disclose to the CAWU its confidential internal investigation into the electronic voting process and in failing to hold a hearing. It also submits that the 651 Decision is unreasonable on its merits. We reject these submissions.

[5] First, the Board did in fact disclose some of the findings from its investigation in the 651 Decision (see especially paras 24-27 of the Board's decision). Its decision not to provide full details

of all of the safeguards in place to prevent voter fraud in its electronic votes was a matter squarely within its labour relations mandate, which, as an expert administrative body, is owed deference. Even if the standard of review was correctness the CAWU has not persuaded us that the Board erred. Nor has the CAWU persuaded us that the Board erred in not granting an oral hearing.

[6] On the substantive matters decided by the Board in the 651 Decision, it is well established, as counsel for the CAWU candidly conceded, that the standard of review is the deferential standard of reasonableness. In our view, the Board's decision is reasonable as it falls within the range of acceptable outcomes defensible on the facts and the law.

[7] Therefore, for the foregoing reasons, we will dismiss the appeal with costs.

“D.G. Near”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-364-12

APPLICATION FOR JUDICIAL REVIEW OF THE DECISION OF THE CANADA INDUSTRIAL RELATIONS BOARD DATED JULY 20, 2012.

STYLE OF CAUSE:

CANADIAN AIRPORT
WORKERS UNION v. GARDA
SECURITY SCREENING INC. v.
INTERNATIONAL
ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS

PLACE OF HEARING:

Toronto, Ontario

DATE OF HEARING:

April 17, 2013

**REASONS FOR JUDGMENT OF
THE COURT BY:**

BLAIS C.J., STRATAS J.A. &
NEAR J.A.

DELIVERED FROM THE BENCH:

NEAR J.A.

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