Federal Court of Appeal Cour d'appel fédérale

Date: 20130306

Docket: A-460-12

Citation: 2013 FCA 68

Present: **SHARLOW J.A.**

BETWEEN:

GÁBOR LUKÁCS

Appellant

and

CANADIAN TRANSPORTATION AGENCY and PORTER AIRLINES INC.

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 6, 2013.

REASONS FOR ORDER BY: SHARLOW J.A.

Federal Court of Appeal

Cour d'appel fédérale

Date: 20130306

Docket: A-460-12

Citation: 2013 FCA 68

Present: **SHARLOW J.A.**

BETWEEN:

GÁBOR LUKÁCS

Appellant

and

CANADIAN TRANSPORTATION AGENCY and PORTER AIRLINES INC.

Respondents

REASONS FOR ORDER

SHARLOW J.A.

[1] Dr. Gábor Lukács is appealing, with leave, an interlocutory decision of the Canadian Transportation Agency made in the course of proceedings to determine his complaint against Porter Airlines Inc. in respect of certain tariff rules. The interlocutory decision dismissed a motion by Dr. Lukács to suspend the impugned tariff rule pending the disposition of his complaint.

[2] The decision under appeal was made by a single member of the Agency. The basis of Dr. Lukács' challenge to the decision is that subsection 16(1) of the *Canada Transportation Act*, S.C. 1996, c. 10, stipulates a quorum of two members for all decisions of the Agency. Dr. Lukács is

seeking an order setting aside the decision dismissing his motion, and referring the motion back to the Agency for redetermination by a panel of at least two members of the Agency.

[3] The respondents have stated in their memoranda of fact and law that the Agency rendered its decision on the complaint on January 16, 2013 (Decision No. 16-C-A-2013 – the "final decision"). Porter Airlines Inc. argues in its memorandum of fact and law that this appeal has been rendered moot by the final decision, and that this Court should decline to entertain the appeal (citing *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 and *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62).

[4] Dr. Lukács objects to any reference in this appeal to the final decision on the basis that it is "new evidence". He argues that all references to the final decision should be struck from the respondents' memoranda of fact and law, without prejudice to the right of the respondents to bring a motion to dismiss this appeal for mootness.

[5] This Court could decline to consider the objection of Dr. Lukács because it is set out only in a letter and not in a notice of motion supported by written submissions and a properly sworn affidavit. However, the respondents have not objected to the lack of formality, and the respondent Porter Airlines Inc. has responded to the objections by letter. Accordingly, I am prepared to deal with this matter as though Dr. Lukács had moved for an order striking the parts of the respondents' memoranda of fact and law that refer to the Agency's final decision.

[6] The objection of Dr. Lukács is based on the premise that the final decision cannot be considered by this Court unless one or both respondents introduce it as evidence in a motion (in particular, a motion to dismiss the appeal for mootness). That premise is incorrect. No such motion is required to inform the Court of a final decision that arguably has rendered an interlocutory decision moot. A reference to the final decision is sufficient, provided the decision itself is provided to the Court. It may be included in the book of authorities.

[7] Any appeal of an interlocutory decision carries with it the risk that a final decision will render the appeal moot. Parties to an interlocutory appeal generally are encouraged to keep the Court apprised of developments that may render the appeal moot and, as noted by Porter Airlines Inc., counsel may be criticized if they fail to do so (see, for example, *Logeswaren v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1374, 43 Imm. L.R. (3d) 225 (F.C.), at paragraph 13). That is why an appellant may seek to stay the proceedings in the court or tribunal below pending the disposition of the interlocutory appeal.

[8] In my view, it was open to Porter Airlines Inc. to argue in its memorandum of fact and law, as it has done, that this appeal is moot and should not be heard. It is open to Dr. Lukács to argue the contrary. He has suggested in his letter that he needs evidence to support his argument that the appeal is not moot or that it should be heard despite being moot. If that is the case, it is open to him to file a motion to that effect. For these reasons, the request of Dr. Lukács for an order striking the parts of the respondents' memorandum that refer to the final decision will be dismissed.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-460-12
STYLE OF CAUSE:	GÁBOR LUKÁCS V. CANADIAN TRANSPORTATION AGENCY and PORTER AIRLINES INC.

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	SHARLOW J.A.
DATED:	March 6, 2013

WRITTEN REPRESENTATIONS BY:

Gábor Lukács	FOR THE APPELLANT (SELF REPRESENTED)
Odette Lalumière	FOR THE RESPONDENT CANADIAN TRANSPORTATION AGENCY
Martha A. Healey	FOR THE RESPONDENT PORTER AIRLINES INC.

SOLICITORS OF RECORD:

Legal Services Branch Canadian Transportation Agency Gatineau, Quebec	FOR THE RESPONDENT CANADIAN TRANSPORTATION AGENCY
Norton Rose Canada LLP Ottawa, Ontario	FOR THE RESPONDENT PORTER AIRLINES INC.