

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130516

Docket: A-148-12

Citation: 2013 FCA 131

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

BETWEEN:

JOHN KING

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on May 15, 2013.

Judgment delivered at Ottawa, Ontario, on May 16, 2013.

REASONS FOR JUDGMENT BY:

NEAR J.A.

CONCURRED IN BY:

**BLAIS C.J.
NOËL J.A.**

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REASONS FOR JUDGMENT

NEAR J.A.

[1] This is an appeal from a judgment of the Federal Court wherein Martineau J. (the Federal Court judge) found reasonable the decision of adjudicator Ian R. Mackenzie (the adjudicator) of the Public Service Labour Relations Board denying two grievances filed by John King (the appellant). The adjudicator concluded that the appellant's employer had just cause to impose a 30-day suspension followed by a termination of employment. In his reasons, the adjudicator found that the appellant engaged in serious misconduct by counseling or procuring an illegal work stoppage in

contravention of subsection 194(1) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22 (the PSLRA).

[2] The appellant was employed by the Canada Border Services Agency as a Border Services Officer in the position's varying iterations from 1989 until his termination on November 20, 2007. Since 1996, he was on paid union leave, serving most of this time as President of Local 24 of the Customs and Excise Union Douanes Accise.

[3] Although the appellant took a different position before the Federal Court judge, he now recognizes that the standard of review applicable to the Federal Court judge's assessment of the decision of the adjudicator is reasonableness. Applying this standard, the appellant contends that the adjudicator misconstrued subsection 194(1) of the PSLRA, disregarding provincial labour jurisprudence, the quasi-criminal nature of the provision, and the "expanding scope of legitimate union activity and expression reflected in recent labour relations and Charter jurisprudence" (appellant's memorandum at paragraph 51). In his view, all of these factors require a higher threshold for what constitutes "counselling or procuring" and, more particularly, that there be an intention on the part of the appellant that an illegal strike be committed for the purposes of subsection 194(1). (appellant's memorandum at paragraphs 53 and 58). The appellant adds in the alternative that the quantum of discipline awarded for his conduct was unreasonable and should be reduced accordingly.

[4] I am unable to agree. These arguments were fully canvassed by the Federal Court judge and, like him, I am of the view that the decision of the adjudicator meets the criteria with respect

to justification, transparency and intelligibility and is well within the range of possible and acceptable outcomes which are defensible in respect of these facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47). The appellant asks this Court to reweigh the evidence before the adjudicator and arrive at a different conclusion. The appellant's disagreement with the outcome does not establish that the decision is unreasonable.

[5] I would thus dismiss the appeal with costs.

“D.G. Near”

J.A.

“I agree
Pierre Blais C.J.”

“I agree
Marc Noël J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-148-12

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE
MARTINEAU DATED APRIL 26, 2012, NO. T-2171-10**

STYLE OF CAUSE: John King v. Attorney General of
Canada

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: May 15, 2013

REASONS FOR JUDGMENT BY: Near J.A.

CONCURRED IN BY: Blais C.J.
Noël J.A.

DATED: May 16, 2013

APPEARANCES:

Andrew Raven FOR THE APPELLANT

Richard Fader FOR THE RESPONDENT

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