

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130430

Docket: A-92-13

Citation: 2013 FCA 117

Present: STRATAS J.A.

BETWEEN:

ATAUR RAHMAN

Applicant

and

**PUBLIC SERVICE LABOUR RELATIONS BOARD and
STEPHAN J. BERTRAND, ADJUDICATOR and
ATTORNEY GENERAL OF CANADA**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on April 30, 2013.

REASONS FOR ORDER BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR ORDER

STRATAS J.A.

[1] The respondents move to dismiss the applicant's application for judicial review for want of jurisdiction. Two bases are offered in support of this relief: the Federal Court has jurisdiction over this matter and the "main thrust in the application for judicial review relates to the decision of the adjudicator."

[2] This last-mentioned basis, by itself, is not a ground for striking an application for judicial review. In fact, almost all applications for judicial review relate to decisions. Only upon reading the written representations does it become clear what the basis is meant to be. The respondents submit that the application for judicial review is doomed to fail because reasonableness will be the standard of review and the applicant cannot possibly establish that the adjudicator's decision is outside of the range of acceptability and defensibility.

[3] Also apparent in the written representations is an alternate request for relief – the transfer of this matter to the Federal Court in the event that this Court does not have jurisdiction. This alternate request for relief should have appeared in the notice of motion.

[4] The purpose of a notice of motion is; (1) to provide the recipient with adequate notice of the order sought and the grounds for seeking the order; and (2) to tell the Court with exactitude what is being sought and why. In light of the foregoing, the notice of motion should have been drafted with more precision.

[5] It is open to this Court to dismiss the motion on the basis that a proper notice of motion is not before it, and to require the respondents to cure the deficiency and re-file the motion. Fortunately for the respondents, the applicant was able to file an adequate response, and so he has not suffered any prejudice. There is also an interest in dealing with this matter efficiently and promptly.

[6] The applicant is asking this Court to review a decision of an adjudicator acting under the *Public Service Relations Act*, S.C. 2003, c. 22. Such a decision may be reviewed only by the Federal Court, not this Court: *Beirnes v. Canada (Treasury Board)*, [1993] F.C.J. 970. This Court will exercise its discretion in favour of transferring this application for judicial review to the Federal Court under Rule 49.

[7] Since this Court has no jurisdiction over the matter, it does not have jurisdiction to deal with the respondents' submission that the application for judicial review should be quashed because it cannot succeed. That submission can be asserted by way of motion in the Federal Court. That Court will have to determine whether such a motion is the sort of "show stopper" or "knockout punch" of the exceptional sort that strikes at the root of this Court's power to entertain the appeal or the appellant's ability to prosecute the appeal any further, rather than something concerning the substantive merits of the appeal, akin to the sort of thing routinely advanced by respondents at the hearing of the appeal: see *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 (C.A.); *Donaldson v. Western Grain Storage By-Products*, 2012 FCA 286 at paragraph 6.

[8] In considering this motion, I disregarded the respondents' reply. The reply was improper in that it only repeated submissions made previously.

[9] Therefore, I shall order that the application for judicial review be transferred to the Federal Court. In the circumstances, the order will be without costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-92-13

STYLE OF CAUSE: Ataur Rahman v. Public Service
Labour Relations Board *et al.*

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: Stratas J.A.

DATED: April 30, 2013

WRITTEN REPRESENTATIONS BY:

Ataur Rahman

ON HIS OWN BEHALF

Caroline Engmann

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada

FOR THE RESPONDENT