

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210615

Docket: A-88-20

Citation: 2021 FCA 120

**CORAM: WEBB J.A.
NEAR J.A.
LASKIN J.A.**

BETWEEN:

SE-BHARAT SINGH

Applicant

and

**INTERNATIONAL ASSOCIATION OF MACHINISTS &
AEROSPACE WORKERS, TRANSPORTATION DISTRICT 140 and
AIR CANADA**

Respondents

Heard by teleconference hosted by the registry on June 9, 2021.

Judgment delivered at Ottawa, Ontario, on June 15, 2021.

REASONS FOR JUDGMENT BY:

WEBB J.A.

CONCURRED IN BY:

**NEAR J.A.
LASKIN J.A.**

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REASONS FOR JUDGMENT

WEBB J.A.

[1] This is an application for judicial review of the decision of the Canada Industrial Relations Board (the Board) dated February 26, 2020 (2020 CIRB LD 4293) (the Reconsideration Decision). In this matter, it is important to focus on the particular decision that

is the subject of this judicial review application. To place this decision in context, it is necessary to briefly describe the other related decisions.

[2] In 2018, Mr. Singh was dismissed from his employment with Air Canada. His union, the International Association of Machinists and Aerospace Workers, Transportation District 140 (the Union) filed a grievance and an arbitration hearing was held on June 11, 2018. On June 14, 2018, this grievance was dismissed.

[3] According to the record, the next proceeding related to this matter was a complaint filed by Mr. Singh alleging that the Union breached its duty of fair representation in violation of section 37 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the Code):

37 A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.

37 Il est interdit au syndicat, ainsi qu'à ses représentants, d'agir de manière arbitraire ou discriminatoire ou de mauvaise foi à l'égard des employés de l'unité de négociation dans l'exercice des droits reconnus à ceux-ci par la convention collective.

[4] The Board dismissed Mr. Singh's complaint (*Singh*, 2019 CIRB LD 4135 (the First Board Decision)) on April 30, 2019. This led to the application for reconsideration that Mr. Singh submitted to the Board on May 31, 2019. The Board dismissed his application on February 26, 2020 and it is this Reconsideration Decision that is the subject of this judicial review application and it is only this Reconsideration Decision that is the subject of this application.

[5] In this matter, Mr. Singh submitted that since Air Canada was added as a party to this proceeding, he could also raise the issue of whether he was wrongfully dismissed from his employment with Air Canada. However, adding Air Canada as a party to this proceeding did not change the nature or the scope of the proceeding. This proceeding remained a judicial review of the Reconsideration Decision only.

[6] In the Reconsideration Decision, the Board dismissed his application on the basis that he was out of time. Subsection 45(2) of the *Canada Industrial Relations Board Regulations, 2012*, SOR/2001-520, (the Regulations) stipulates that an application for reconsideration of a decision of the Board must be filed within 30 days of the particular decision:

(2) The application must be filed within 30 days after the date the written reasons of the decision or order being reconsidered are issued.

(2) La demande est déposée dans les trente jours suivant la date où les motifs écrits de la décision ou de l'ordonnance réexaminée sont rendus.

[7] Unfortunately, Mr. Singh's application was filed 31 days after the First Board Decision was issued. The Board found that Mr. Singh did not request an extension of time nor did he provide any explanation of why he failed to file his reconsideration application within the required time limit. As a result, the Board dismissed his application as being untimely. The Board then noted that even if his application had been filed within the time limit, the Board would still have dismissed it, as Mr. Singh had not persuaded the Board that there was any ground on which the Board could reconsider the First Board Decision.

[8] The applicable standard of review for the merits of the Reconsideration Decision is reasonableness (*Langevin v. Air Canada*, 2020 FCA 48, at para. 12). The issue is whether the

Board's decision that Mr. Singh's application for reconsideration of the First Board Decision was dismissed because it was not filed in time is reasonable.

[9] Mr. Singh, in his application for judicial review of the Reconsideration Decision, noted that an extension to file had been given by Mr. Jean-Daniel Tardif (Regional Director). There is, however, nothing in the application to indicate the organization to which Mr. Tardif belonged. The only reference to this statement of Mr. Tardif is the brief reference to it in Mr. Singh's notice of application. Mr. Singh indicated that he only verbally received this extension request. It would also appear that Mr. Singh did not inform the Board of the discussions that he had with Mr. Tardif.

[10] Section 46 of the Regulations, provides that the Board may vary or exempt a person from complying with any rule or procedure including any time limits:

46 The Board may vary or exempt a person from complying with any rule of procedure under these Regulations — including any time limits imposed under them or any requirement relating to the expedited process — where the variation or exemption is necessary to ensure the proper administration of the Code.

46 Le Conseil peut, dans une instance, modifier toute règle de procédure prévue au présent règlement ou dispenser une personne de l'observation de celle-ci — notamment à l'égard d'un délai qui y est prévu et des exigences relatives à la procédure expéditive — si la modification ou la dispense est nécessaire à la bonne administration du Code.

[11] As a result, any extension of time would have been granted by the Board. There is nothing in the file to indicate that Mr. Tardif was acting on behalf of the Board or had the authority to grant an extension of time to Mr. Singh. There is also no indication that any confirmation of

what Mr. Tardif had indicated to Mr. Singh was obtained from Mr. Tardif or that Mr. Singh had informed the Board hearing his application for reconsideration of his discussions with Mr. Tardif. As a result, the decision of the Board that Mr. Singh's application for reconsideration was not filed on a timely basis is reasonable and I would dismiss this application on this basis.

[12] There also would be no basis to find that the Board erred in noting that, in the alternative, it would have dismissed his complaint. This Court in *Langevin v. Air Canada* noted that the role of the Board in reconsidering a prior decision is limited:

[3] The Board's jurisprudence, as confirmed by this Court, has consistently held that the reconsideration is neither an appeal nor a *de novo* consideration of the original decision (*Williams v. Teamsters Local Union 938*, 2005 FCA 302). Reconsideration panels do not re-weigh or substitute their own appreciation of the evidence, nor do they intervene simply because they might have exercised their discretion differently (*Association des réalisateurs v. Société Radio-Canada*, 2015 CIRB 763; *Syndicat des communications de Radio-Canada (FNC-CSN) v. Ms. Z*, 2015 CIRB 752).

[4] These principles support finality and certainty, which are important values in the workplace. Consequently, the Board's jurisprudence limits the power of reconsideration to exceptional circumstances. These include:

- 1) where there are facts that could not have been brought to the attention of the original panel and which could have persuaded the Board to arrive at a different conclusion;
- 2) errors of law or policy which call into question the interpretation of the Code; and
- 3) a failure to respect a principle of natural justice.

[13] Mr. Singh, in his submissions in this application for judicial review of the Reconsideration Decision, identified a number of facts. It is, however, unclear whether all of the facts to which Mr. Singh referred, were before the Board when it rendered its Reconsideration

Decision. The general rule is that the evidentiary record that is admissible in an application for judicial review of a decision of a particular board or tribunal, is only the evidentiary record that was before such board or tribunal.

[14] In *Canada (Attorney General) v. Delios*, 2015 FCA 117, this Court stated:

[41] In administrative regimes such as this, Parliament has given the administrative decision-maker, not the reviewing court, the job of finding the facts. Because of this demarcation of roles, the reviewing court cannot allow itself to become a forum for fact-finding on the merits of the matter. See generally *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 N.R. 297 at paragraph 17.

[42] Accordingly, as a general rule, the evidentiary record before the Federal Court on judicial review is restricted to the evidentiary record that was before the administrative decision-maker. In other words, as a general rule, evidence that was not before the administrative decision-maker and that goes to the merits of the matter before the Board is not admissible on judicial review. As a result, most affidavits filed on judicial review only attach the record that was before the administrative decision-maker, without commentary. [...]

[15] Mr. Singh has not identified any exception to this general rule that would be applicable.

As a result, only the evidentiary record that was before the Board when it rendered its Reconsideration Decision can be considered. Mr. Singh has failed to establish that the Board's finding that he did not "raise any new facts that could not have been brought to the attention of the original panel and which would likely have caused it to arrive at a different conclusion" was unreasonable.

[16] The Board also found that “Mr. Singh does not raise, either explicitly or implicitly, an error of law or policy or a failure of the original panel to respect a principle of natural justice or procedural fairness”. Mr. Singh does not challenge this finding by the Board.

[17] In this application, Mr. Singh attempted to reargue why, in his view, his dismissal from employment with Air Canada was wrongful. However, that is not the issue that is before us in this application for judicial review of the Reconsideration Decision.

[18] As a result, I would dismiss Mr. Singh’s application for judicial review of the Reconsideration Decision without costs.

“Wyman W. Webb”

J.A.

“I agree
D. G. Near J.A.”

“I agree
J.B. Laskin J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPLICATION FOR JUDICIAL REVIEW OF THE DECISION OF THE CANADA
INDUSTRIAL RELATIONS BOARD DATED FEBRUARY 26, 2020, CITATION NO.
2020 CIRB LD 4293**

DOCKET: A-88-20

STYLE OF CAUSE: SE-BHARAT SINGH v.
INTERNATIONAL
ASSOCIATION OF
MACHINISTS & AEROSPACE
WORKERS, TRANSPORTATION
DISTRICT 140 and AIR CANADA

PLACE OF HEARING: HEARD BY TELECONFERENCE
HOSTED BY THE REGISTRY

DATE OF HEARING: JUNE 9, 2021

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: NEAR J.A.
LASKIN J.A.

DATED: JUNE 15, 2021

APPEARANCES:

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