

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20211208**

**Docket: A-160-20**

**Citation: 2021 FCA 238**

**CORAM: PELLETIER J.A.  
RENNIE J.A.  
GLEASON J.A.**

**BETWEEN:**

**MORRIS KLOS**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Vancouver, British Columbia on December 1, 2021.

Judgment delivered at Ottawa, Ontario, on December 8, 2021.

**REASONS FOR JUDGMENT BY:**

**GLEASON J.A.**

**CONCURRED IN BY:**

**PELLETIER J.A.  
RENNIE J.A.**

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20211208**

**Docket: A-160-20**

**Citation: 2021 FCA 238**

**CORAM: PELLETIER J.A.  
RENNIE J.A.  
GLEASON J.A.**

**BETWEEN:**

**MORRIS KLOS**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT**

**GLEASON J.A.**

[1] Mr. Klos has applied for judicial review of a June 15, 2020 interlocutory letter decision of the Federal Public Sector Labour Relations and Employment Board (the Board) in which the Board dismissed his request for an injunction, reinstating his wages. In its decision, the Board also found that Mr. Klos' request for an opportunity to make oral submissions on its jurisdiction to make the requested order was premature because, at that point, the employer had not yet objected to Board's jurisdiction over the grievance. The employer subsequently raised such an

objection. The Board has determined this objection will be dealt with in writing and has set a schedule for the exchange of the parties' submissions.

[2] Mr. Klos was employed by Correctional Services Canada (CSC) for approximately seven years before his employment was terminated on September 20, 2016. Since then, Mr. Klos has filed multiple grievances concerning the events surrounding his termination, including one on December 9, 2019, related to his termination. This grievance has been referred to adjudication and it is now, along with two others, pending before the Board.

[3] In early June 2020, Mr. Klos emailed the Board, requesting an injunction to "stop CSC from withholding pay" and requesting an opportunity to make oral submissions regarding jurisdiction at a hearing. As noted, in the decision under review, the Board denied both requests.

[4] Mr. Klos argues before this Court that the Board failed to exercise its jurisdiction in denying his request for an injunction and that this Court should grant it instead.

[5] We cannot do so because Mr. Klos' application for judicial review is premature and it is for the Board - as opposed to this Court - to decide the issue of any wages to which Mr. Klos might be entitled.

[6] As this Court held in *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61, [2011] 2 F.C.R. 332 at para. 31, "absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course." This principle

applies to all matters that arise during the administrative process, including jurisdictional questions. Plainly, since the Board has not yet held a hearing to address Mr. Klos' pending grievances but will do so, the administrative process has not run its course.

[7] As noted by this Court at paragraph 33 of *C.B. Powell*, the threshold for exceptionality is high, and Mr. Klos has not raised any such circumstances before this Court that would justify a departure from the general rule that a party cannot seek judicial review of an interlocutory administrative decision.

[8] Both as it relates to the interim decision that is the subject of this application and to Mr. Klos' grievances more generally, the Board is entitled to control its own procedure and has the explicit statutory authority to decide any matter before it without holding an oral hearing by virtue of section 22 of the *Federal Public Sector Labour Relations and Employment Board Act*, S.C. 2013, c. 40, s. 365.

[9] Further, by virtue of subsection 228(2) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2, a Board adjudicator is empowered to make the order the adjudicator considers appropriate. In a termination grievance, this often will include an order reinstating a successful grievor to the grievor's former position if there is no cause for the termination, coupled with an award of back pay and compensation for lost benefits (see *Bahniuk v. Canada (Attorney General)*, 2016 FCA 127, 484 N.R. 10 at para. 22). Such an award would have the same effect as the injunction that Mr. Klos is seeking from this Court, and the Board is the

proper venue in which to seek reinstatement and damages for lost wages and benefits via a properly worded grievance filed in a timely fashion.

[10] Mr. Klos also submits that he is entitled to injunctive relief under sections 152 and 153 of Part II of the *Canada Labour Code*, RSC 1985, c. L-2 (the Code). These provisions are inapplicable to him. They afford only the Head of Compliance and Enforcement, or if one has not been appointed, the federal Minister of Labour authority to apply to a judge of a superior court to enjoin an ongoing breach of Part II of the Code (Code, ss. 152-153 and s. 122.21, which contains the definition of “Head”).

[11] I would therefore dismiss this application, with costs.

\_\_\_\_\_  
"Mary J.L. Gleason"  
J.A.

“I agree.  
J.D. Denis Pelletier J.A.”

“I agree.  
Donald J. Rennie J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-160-20

**STYLE OF CAUSE:** MORRIS KLOS v. ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH  
COLUMBIA

**DATE OF HEARING:** DECEMBER 1, 2021

**REASONS FOR JUDGMENT BY:** GLEASON J.A.

**CONCURRED IN BY:** PELLETIER J.A.  
RENNIE J.A.

**DATED:** DECEMBER 8, 2021

**APPEARANCES:**

Morris Klos FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Andréanne Laurin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

A. François Daigle FOR THE RESPONDENT  
Deputy Attorney General of Canada