

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220111

Docket: A-454-19

Citation: 2022 FCA 6

**CORAM: STRATAS J.A.
RENNIE J.A.
MACTAVISH J.A.**

BETWEEN:

ADAM ALLISON GRANT

Applicant

and

UNIFOR AND VIA RAIL INC.

Respondents

Heard by online video conference hosted by the Registry on January 11, 2022.
Judgment delivered from the Bench at Ottawa, Ontario, on January 11, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on January 11, 2022).

STRATAS J.A.

[1] Before the Canada Industrial Relations Board, the applicant complained against his union on the ground of unfair representation: *Canada Labour Code*, R.S.C. 1985, c. L-2, s. 37.

[2] However, the Board did not consider the merits of his complaint. It considered itself barred from doing so: under subsection 97(2) of the *Code*, the applicant had to complain 90 days after he knew or should have known of his union's conduct. The Board found that the applicant's complaint was brought approximately six months after that time.

[3] However, where there are compelling reasons, the Board can grant an extension of time: *Code*, s. 16(m.1). Here, based on the record before it, the Board found no such reasons.

[4] The applicant comes to this Court seeking to quash these findings and decisions.

[5] First, the applicant submits in his memorandum of fact and law that the Board was procedurally unfair by deciding the matter on the basis of written materials. The applicant had requested an oral hearing. The Board denied his request on the ground that it considered the written materials sufficient.

[6] This was not procedurally unfair to the applicant. We are satisfied that the applicant had an opportunity to make his case fairly and fully on all issues before the Board. Indeed, the nature and breadth of the materials shows that he availed himself of that opportunity fully. In upholding the Board's decision to proceed by way of written materials, we note that the Board has a wide discretion as to the mode of hearing and the Code expressly authorizes determinations on the basis of written materials. The Board's ability to proceed by way of written materials—where, as here, it is appropriate—further the statutory objectives of efficiency, conservation of resources and speed.

[7] Both in his memorandum and orally, the applicant submits that the Board's findings and decisions are unreasonable. We disagree. The Board identified and charged itself on the governing statutory requirement: the need for an applicant to show compelling reasons. The Board's factual findings on this issue and its conclusion that there were no compelling reasons for granting the extension are sustainable—indeed heavily supported—by the evidence before it.

[8] Although the applicant correctly acknowledges that we cannot engage in second-guessing of the Board under the reasonableness standard, in fact he invites us to second-guess the Board's factual findings and applications of the statutory standard to those findings. This we cannot do. We can interfere only where there is some fundamental flaw that undermines our confidence in the acceptability and defensibility of the Board's decision. Here, there is no such flaw.

[9] In oral submissions, the applicant submits that the reasons show, in their sparseness, that the Board did not grapple with the evidence or his submissions. We disagree. The Board's reasons need not be encyclopedic. Here, the Board's reasons, read in light of the record before it, show that it grappled with the request for an extension of time, especially the submissions and evidence on key points concerning it and, thus, satisfied the requirement of justification for its decision: *Canada (Citizenship and Immigration) v. Mason*, 2021 FCA 156 citing key parts of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 that bind us on this point.

[10] A number of the applicant's submissions before the Board and before us concern issues other than his request for an extension of time. For example, he has many broader issues

concerning his union and how it conducts itself. As well, he considers the merits of his complaint to be well-founded. Most of his oral submissions were devoted to the merits of his complaint.

[11] However, these issues and the merits of his complaint are not relevant to the issues before the Board and this Court: the Board's refusal to grant an extension of time, the reasonableness of the Board's findings and decisions that led to that refusal, and whether the Board acted in a procedurally fair manner. For the above reasons, the applicant has not persuaded us to find in his favour on any of these issues.

[12] Therefore, we will dismiss the application with costs.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-454-19

APPLICATION FOR JUDICIAL REVIEW OF THE DECISION OF THE CANADA INDUSTRIAL RELATIONS BOARD DATED NOVEMBER 19, 2019, FILE NUMBER 2019 CIRB LD 4229

STYLE OF CAUSE: ADAM ALLISON GRANT v.
UNIFOR AND VIA RAIL INC.

PLACE OF HEARING: HEARD BY ONLINE VIDEO
CONFERENCE HOSTED BY
THE REGISTRY

DATE OF HEARING: JANUARY 11, 2022

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
RENNIE J.A.
MACTAVISH J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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