Federal Court of Appeal  Cour d'appel fédérale

Date: 20221014

Docket: A-240-20

Citation: 2022 FCA 173

[ENGLISH TRANSLATION]

CORAM: **GAUTHIER J.A.**
RIVOALEN J.A.
ROUSSEL J.A.

BETWEEN:

FRANÇOIS PARIS

Applicant

and

SYNDICAT DES EMPLOYÉS DE TRANSPORTS R.M.T. (UNIFOR-QUÉBEC)
AND
TRANSPORTS R.M.T. INC.

Respondents

Heard by online videoconference hosted by the registry

on October 11, 2022.

Judgment delivered at Ottawa, Ontario, on October 14, 2022.

REASONS FOR JUDGMENT BY: ROUSSEL J.A.

CONCURRED IN BY: GAUTHIER J.A.
RIVOALEN J.A.

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REASONS FOR JUDGMENT

ROUSSEL J.A.

[1] This is an application for judicial review of a Canada Industrial Relations Board decision rendered on June 3, 2020, dismissing the complaint filed by François Paris under section 37 of the *Canada Labour Code*, R.S.C. 1985, c. L-2. In his complaint, Mr. Paris alleged that his bargaining agent, the Syndicat des employés de transports R.M.T. (Unifor-Québec) (the Union),

breached its duty of fair representation in handling his two grievances contesting his one-day suspension and his dismissal.

[2] The parties agree that the Board's decision should be reviewed on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 83). In matters of procedural fairness, the role of this Court is to determine whether the proceedings are fair having regard to all the circumstances (*Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at paras. 54 to 56).

[3] Before this Court, Mr. Paris criticizes the Board for breaching its duty of procedural fairness by refusing to hold an oral hearing, notwithstanding the request for hearing in his initial complaint and subsequent written submissions. He argues that the Board's decision prevented him from fully presenting his case and from fully being heard. In this respect, he raises several factors that required testimonial evidence to be assessed.

[4] This argument cannot be accepted.

[5] Section 16.1 of the Code provides that the Board may decide any matter before it without holding an oral hearing. This is a discretionary power to which the Court must show considerable deference. The fact that Mr. Paris requested an oral hearing on the basis of contradictory evidence and credibility issues does not automatically warrant an oral hearing, and neither does the wish to introduce a written witness statement or other evidence. Mr. Paris was required to set out in writing all the facts and arguments that he intended to submit to the Board (*Ducharme v.*

Air Transat A.T. Inc., 2021 FCA 34 at paras. 19 and 21; *Wsáneć School Board v. British Columbia*, 2017 FCA 210 at para. 33; *Madrigga v. Teamsters Canada Rail Conference*, 2016 FCA 151 at paras. 26 to 28; *Dumont v. Canadian Union of Postal Workers, Montréal Local*, 2011 FCA 185 at paras. 8 and 9; *Amalgamated Transit Union, Local 1624 v. Syndicat des travailleuses et travailleurs de Coach Canada – CSN*, 2010 FCA 154 at paras. 17 and 18; *Raymond v. Canadian Union of Postal Workers*, 2003 FCA 418 at para. 4).

[6] Mr. Paris had the burden of proving to the Board that an oral hearing was necessary in the circumstances of his case. He did not raise any valid arguments in support of his requests for hearing, relying instead on vague and general assertions. But allegations of a breach of procedural fairness are not sufficient; the breach must also be demonstrated. Mr. Paris has not persuaded me that the Board breached its duty of procedural fairness by not holding an oral hearing to decide the complaint. He was able to file evidence in support of his complaint, submit his written representations to the Board, and respond to those of the Union and Transports R.M.T. inc., his former employer. I see no error there.

[7] Mr. Paris also argues that the Board's decision was unreasonable. He first criticizes the Board for refusing to exercise its jurisdiction by restrictively limiting its assessment of the Union's conduct during management of the grievance arbitration. He maintains that, in assessing the Union's conduct, the Board had to consider the entire factual context demonstrating his relationship with the Union representatives, in particular with regard to the animosity, conflict, and hostility against him. Furthermore, he argues that the Board erred in its analysis of the Union's conduct in its summoning of witnesses, admitting the video during arbitration, and

deciding not to seek a judicial review of the arbitrator's decision. He also submits that the Board did not consider all of the relevant evidence.

[8] I disagree with Mr. Paris's arguments.

[9] It is settled case law that, in the context of a complaint pursuant to section 37 of the Code, the Board must not "rashly involve itself" with the quality of union representation before the arbitrator, the admissibility of evidence or the choice of strategies (*Bomongo v. Communications, Energy and Paperworkers Union of Canada*, 2010 FCA 126 at para. 15; *Ducharme* at para. 41).

[10] In its reasons, the Board examined the nature of the complaint and considered the arguments of Mr. Paris, the Union and Transports R.M.T. inc. It noted that its role when dealing with a complaint alleging a breach of the duty of fair representation is to examine the Union's conduct and ensure that the Union did not act in a manner that was arbitrary, discriminatory or in bad faith in its representation of an employee. Applying this analytical framework to the factual evidence in the record, the Board finds that Mr. Paris did not prove that the Union breached its duty of fair representation in its handling of the grievances before they were referred to arbitration.

[11] The Board then noted that several of Mr. Paris's allegations related essentially to the quality of the representation provided by the Union as the arbitration was prepared and as it unfolded. In particular, his allegations had to do with the choice of persons responsible for representing him in arbitration, the management of witnesses and evidence, and the fact that his

representative did not raise an objection to the admissibility of video evidence in a timely manner. After conducting an overview of the case law on its limited role in reviewing the quality of union representation, the Board found that in this case, it was not shown that there were any circumstances that would warrant departing from these judge-made principles. It also determined that the Union was responsible for choosing whether to contest the arbitration decision by way of judicial review.

[12] After reviewing the record and considering Mr. Paris's arguments, I am of the opinion that the Board reasonably acknowledged the limitations of its power to review the complaint. It was not for the Board to conduct a detailed review of all the Union's decisions. Mr. Paris had the burden of demonstrating in a convincing way that the Union had acted in a manner that was arbitrary, discriminatory or in bad faith. In the absence of such evidence, the Board could reasonably dismiss the complaint.

[13] Furthermore, the Board was not required to refer to all the evidence submitted or to make a finding on each constituent element leading to its final conclusion, as Mr. Paris demanded. The Board is presumed to have considered all of the evidence (*Vavilov* at para. 128; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para. 16; *Simpson v. Canada (Attorney General)*, 2012 FCA 82 at para. 10).

[14] Because Mr. Paris has not discharged his burden of proof, and considering the well-settled case law on the matter, I am not persuaded that the Board's decision is unreasonable.

[15] Finally, at the hearing, Mr. Paris confirmed that the letter of understanding dated January 27, 2017, had not been filed with the Board. However, it is important to bear in mind the general principle prohibiting this Court from admitting new evidence in a judicial review proceeding, except in exceptional circumstances (*Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras. 19 and 20). Because it has not been established that this document falls within one of the recognized exceptions, I find it inadmissible.

[16] I would therefore dismiss this application for judicial review. The respondents claimed costs in their memoranda, but they indicated at the hearing that they left everything to the discretion of the Court. Given the context of the case, I am not inclined to order costs.

"Sylvie E. Roussel"
J.A.

"I agree.
Johanne Gauthier J.A."

"I agree.
Marianne Rivoalen J.A."

Certified true translation
Vera Roy, Jurilinguist

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-240-20
STYLE OF CAUSE:	FRANÇOIS PARIS v. SYNDICAT DES EMPLOYÉS DE TRANSPORTS R.M.T. (UNIFOR-QUÉBEC) and TRANSPORTS R.M.T. INC.
PLACE OF HEARING:	ONLINE VIDEOCONFERENCE
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REASONS FOR JUDGMENT BY:	ROUSSEL J.A.
CONCURRED IN BY:	GAUTHIER J.A. RIVOALEN J.A.
DATED:	OCTOBER 14, 2022

APPEARANCES:

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