

Federal Court of Appeal



Cour d'appel fédérale

Date: 20221214

Docket: A-22-21

Citation: 2022 FCA 217

**CORAM: GAUTHIER J.A.
MACTAVISH J.A.
LEBLANC J.A.**

BETWEEN:

DAVID CLARK

Applicant

and

**AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
and JAZZ AVIATION LP**

Respondents

Heard at Calgary, Alberta, on October 25-26, 2022.

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

REASONS FOR JUDGMENT BY:

MACTAVISH J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
LEBLANC J.A.**

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REASONS FOR JUDGMENT

MACTAVISH J.A.

[1] David Clark is an airline pilot employed by the respondent Jazz Aviation LP (Jazz). He is also a member of the Airline Pilots Association, International (ALPA), the certified bargaining agent for Jazz pilots. Captain Clark seeks judicial review of a decision of the Canada Industrial Relations Board, dismissing his unfair labour practices complaint against his union and his employer.

[2] Captain Clark asserts that he was treated unfairly in the Board process because of its refusal to hold an oral hearing into his complaint.

[3] Insofar as the merits of the Board's decision are concerned, part of Captain Clark's complaint alleged that ALPA had breached various sections of the *Canada Labour Code*, R.S.C. 1985, c. L-2 in bringing disciplinary proceedings against him that had resulted in his expulsion from the union. While decisions of this nature are subject to challenge through the union's internal appeal process, Captain Clark argued that given his circumstances, he should not be required to exhaust that process before bringing his complaint to the Board. The Board declined to exercise its discretion to deal with this aspect of Captain Clark's complaint because of his failure to exhaust his internal remedies. Captain Clark says that this decision was unreasonable.

[4] Captain Clark also complained that he had been subject to a campaign of harassment, coercion and intimidation on the part of his union, culminating in the disciplinary charges against him. He alleged that in bringing these disciplinary charges, ALPA had engaged in discriminatory treatment against him for exercising his rights under the *Code*. In addition, Captain Clark says that he was the subject of reprisals by ALPA for having previously filed a duty of fair representation complaint with the Board. Finally, Captain Clark alleged that Jazz had engaged in unfair labour practices against him by interfering in union matters.

[5] The Board addressed these latter aspects of Captain Clark's complaint, concluding that his allegations of unfair labour practices on the part of ALPA and Jazz had not been

substantiated. Consequently, the Board dismissed these aspects of his unfair labour practices complaint.

[6] Before addressing the issues raised by Captain Clark's application, I note that the facts of this matter are lengthy and complicated. They have been carefully set out in the Board's decision and will not be repeated here. While I am fully aware of the events relied upon by Captain Clark in support of his complaint, I will only refer to those facts necessary to resolve the issues before us.

[7] Captain Clark has advanced numerous arguments before us. While I have not found it necessary to address all of his arguments in these reasons, Captain Clark may be assured that I have carefully considered all of them. However, for the reasons that follow, I have not been persuaded that the Board treated Captain Clark unfairly by dealing with his complaint in writing, or that it erred in dismissing Captain Clark's unfair labour practices complaint. Consequently, I would dismiss this application for judicial review.

I. Standard of Review

[8] Before addressing the merits of his application, I would note that most of Captain Clark's arguments involve attacks on factual findings made by the Board. These findings are subject to review on the reasonableness standard, in accordance with the principles set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[9] That is, absent exceptional circumstances, a reviewing court should not interfere with the factual findings of an administrative tribunal. The reviewing court must also refrain from reweighing and reassessing the evidence considered by the administrative decision-maker: *Vavilov*, above at para. 125. A court applying the reasonableness standard should not ask itself what decision it would have made. Rather, it must consider only whether the decision made by the administrative decision-maker -- including both the rationale for the decision and the outcome to which it led -- was unreasonable: *Vavilov*, above at para. 83.

[10] To the extent that Captain Clark has raised an issue of procedural fairness with respect to the lack of an oral hearing before the Board, it is for this Court to determine whether the process followed by the Board satisfied the level of fairness required in all of the circumstances: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 43.

II. The Failure of the Board to Provide an Oral Hearing

[11] As noted earlier, Captain Clark alleges that he was treated unfairly by the Board as it refused to hold an oral hearing with respect to his complaint. The Board stated in its decision that it had considered whether an oral hearing was required in this case, and that it had concluded that the documentation in the record was sufficient for it to decide the issues before it without an oral hearing.

[12] According to Captain Clark's memorandum of fact and law, the complexity of the issues, the size of the record and the need to resolve questions of credibility all necessitated an oral

hearing. He also argued before us that the Board did not properly take his disability into account in declining to order an oral hearing.

[13] Section 16.1 of the *Code* provides that “[t]he Board may decide any matter before it without holding an oral hearing”. The full text of this and other statutory provisions referred to in these reasons is attached as an appendix to this decision. Also relevant to this issue is section 10 of the *Canada Industrial Relations Board Regulations, 2012* (SOR/2001-520), which provides that an application filed with the Board must include, amongst other things, whether an oral hearing is being requested, and if so, the reasons for the request.

[14] Captain Clark acknowledges that he did not ask for an oral hearing in his application to the Board. He does, however, point to a portion of the “Final Reply” that he filed with the Board where he stated “[i]f it pleases the Board, we welcome the opportunity to explain further with witness accounts the events contained in this Complaint”. He also refers to another portion of the same document where he says “[g]iven the opportunity for a hearing, Clark will present numerous credible witnesses to bolster the substantial evidence already disclosed to the Board”. Captain Clark concedes, however, that neither statement amounts to an express request for an oral hearing.

[15] ALPA notes that in *Raymond v. Canadian Union of Postal Workers*, 2003 FCA 418, this Court stated that we must defer to Board decisions with respect to the holding of oral hearings, which are a matter of internal policy that is beyond the scope of judicial review in all but exceptional circumstances: at para. 4. That said, while the Board undoubtedly has considerable

discretion in this regard, it is our obligation to ensure that litigants are treated fairly in the Board process.

[16] As the Supreme Court of Canada observed in *Baker v. Canada (Citizenship and Immigration)*, [1999] 2 S.C.R. 817, an oral hearing is not always necessary to ensure a fair proceeding, and meaningful participation can occur in different ways in different situations: at para. 33. The onus is on the party requesting the oral hearing to satisfy the Board that an oral hearing is necessary: *Raymond*, above at para. 8.

[17] Moreover, as this Court observed in *Global Television v. Communications, Energy and Paperworkers Union of Canada*, 2004 FCA 78, “the function of the duty of fairness is to provide minimum, not optimal standards of procedural propriety”: at para. 24.

[18] Captain Clark can hardly blame the Board for failing to hold an oral hearing with respect to his complaint when he did not expressly ask them to do so. As noted earlier, the Regulations governing the Board required that Captain Clark include such a request in his initial application to the Board. He was, moreover, well aware that his written submissions needed to be fulsome as the Board might decide the matter on the basis of the parties’ written submissions and other materials on file, as a statement to this effect appears in his “Final Reply”.

[19] Captain Clark had ample opportunity to provide the Board with written submissions and documents in support of his complaint. He took full advantage of this opportunity, providing the Board with over 2,500 pages of material in connection with his complaint, and he has not

identified any information or evidence that he was precluded from putting before the Board:

Ducharme c. Air Transat A.T. Inc., 2021 CAF 34 at para. 22. Moreover, to the extent that

Captain Clark now seems to suggest that an oral hearing was required in order to accommodate

his disability, it was incumbent on him to draw this to the attention of the Board: *Central*

Okanagan School District No. 23 v. Renaud, [1992] 2 S.C.R. 970, at para. 43.

[20] Captain Clark has thus failed to persuade me that the Board treated him unfairly in the complaint process.

III. Did the Board Err in Concluding that it had no Jurisdiction to Consider the Reasonableness of the Requirements under Subsection 97(5) of the Code?

[21] Captain Clark also argued that given his medical condition, he should not be required to face the perpetrators of his harassment in an internal union appeal process that is bound to be unfair. According to Captain Clark, the Board erred in finding that it had no jurisdiction to consider his contention that, in all of the circumstances, it was unreasonable to expect him to have to exhaust his internal remedies before accessing the Board's process.

[22] In support of this argument, Captain Clark points to one statement in the Board's lengthy reasons where it states that Captain Clark's argument "speaks to the reasonableness of the requirements set out in the Code". The Board went on to state that "[t]hose are questions that fall within the responsibilities of Parliament, and the Board has no jurisdiction to make such inquiries in the context of adjudicating a complaint".

[23] To the extent that the Board has only the powers conferred on it by the *Code*, this is a correct statement of the law: *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC 14 at para. 16; *Hillier v. Canada (Attorney General)*, 2019 FCA 44 at para. 10. This does not mean, however, that the Board did not consider what Captain Clark refers to as “the psychological harm factor” in assessing whether he had “ready access” to ALPA’s internal appeals process. As will be discussed in the next section of these reasons, the Board did indeed consider Captain Clark’s medical condition in deciding whether to exercise its discretion to deal with his complaint, notwithstanding his failure to exhaust ALPA’s internal appeals process.

IV. Did the Board Err in Refusing to Allow Captain Clark to Bypass ALPA’s Appeal Process?

[24] As noted earlier, part of Captain Clark’s unfair labour practices complaint related to the disciplinary proceedings and sanctions imposed on him by ALPA. Captain Clark sought to have the Board deal with these issues, notwithstanding the fact that he had failed to exhaust ALPA’s internal appeal process before bringing his complaint to the Board.

[25] According to Captain Clark, in bringing disciplinary charges against him, ALPA breached paragraphs 95(f), (g) and (i), section 96 and section 110 of the *Code*. The question arose, however, with respect to the Board’s ability to deal with the paragraphs 95(f) and (g) aspects of his complaint on the basis that he had failed to exhaust his internal remedies within the union’s appeal process.

[26] Paragraph 95(f) provides, in part, that no trade union shall expel an employee from membership in the trade union by applying the membership rules of the union to the employee in a discriminatory manner. Paragraph 95(g) provides that a union shall not take disciplinary action against or impose any form of penalty on an employee by applying the standards of discipline of the union to that employee in a discriminatory manner.

[27] Amongst other things, subsection 97(4) of the *Code* provides that no complaint shall be made to the Board with respect to an alleged breach of paragraphs 95(f) or (g) by a union, unless the complainant has presented an appeal in accordance with any procedure established by the union to which the complainant has been given “ready access”.

[28] There is, however, an exception to this statutory requirement. In accordance with subsection 97(5) of the *Code*, the Board may determine a complaint with respect to an alleged failure by a union to comply with paragraph 95(f) or (g) that has not been presented as an appeal to the union, in certain specified cases. These include situations where the Board is satisfied that the actions or circumstances giving rise to the complaint are such that the complaint should be dealt with without delay, or where the union has not given the complainant “ready access” to an appeal procedure.

[29] Captain Clark submits that ALPA had not given him “ready access” to the appeal procedure as it had created the environment that caused his disability and rendered him medically unfit to participate in such proceedings.

[30] In these circumstances, Captain Clark asserts that the Board acted unreasonably in refusing to exercise the discretionary power vested in it by the *Code* to deal with his challenge to ALPA's disciplinary decisions, notwithstanding his failure to exhaust ALPA's internal appeal process before bringing his complaint to the Board. In order to put Captain Clark's submissions into context, it is necessary to provide some background to his complaint.

[31] Captain Clark was a Captain Representative representing Jazz pilots with a home base in Calgary, and a member of ALPA's Master Executive Council (MEC). After joining the MEC, it became apparent that there were differences of opinion between Captain Clark and other members of the MEC. Captain Clark says that this led to a wide range of negative behaviours being directed at him by, or at the instigation of, MEC members. Amongst other things, these included his being sworn at, being given the 'silent treatment', being subjected to negative comments about his intelligence and competence, being subjected to threats and harassment as well as name-calling and physical threats.

[32] According to Captain Clark, this conduct culminated in the MEC Chair leading others to file disciplinary charges against him. This in turn led Captain Clark to file a duty of fair representation complaint against ALPA with the Board. Following the filing of his complaint, Captain Clark says that the intimidation and harassment against him escalated, leading to the filing of a second set of disciplinary charges against him.

[33] ALPA then convened a disciplinary hearing, which was presided over by American members of the union. Amongst the other allegations leveled against Captain Clark, he was

charged with accusing members of the Jazz MEC and Negotiating Committee of receiving bribes or other material consideration from Jazz in exchange for advancing the company's own agenda with respect to representation of the bargaining unit. He was also charged with discussing union business with Jazz's Director of Flight Operations, failing to recognize the legitimacy of the Jazz MEC confidentiality policy and misappropriating union money or property.

[34] Although the Union's Constitution provided that members facing disciplinary proceedings could only be represented by another ALPA member, on an exceptional basis, the Union's President granted Captain Clark permission to be represented by a lawyer at his disciplinary hearing, although it appears that this may not in fact have occurred. The Chairman of the Hearing Board subsequently offered Captain Clark the option of attending the hearing by telephone rather than in person. He was also allowed to provide a written statement from a witness who was unable to attend the hearing and to provide written submissions after the completion of the evidence.

[35] Some, but not all of the allegations against Captain Clark were found to have been substantiated. The Hearing Board imposed differing penalties for the various charges that were substantiated, including two two-year suspensions of his union membership and expulsion from ALPA.

[36] Captain Clark filed an appeal through the union's internal appeal process, leaving work on a medical leave shortly thereafter. He attributes his medical problems to the harassment and other difficulties that he says he had experienced in the workplace.

[37] ALPA endeavoured to schedule the hearing of Captain Clark's appeal for a few weeks after the completion of the hearing before the Hearing Board, however Captain Clark requested an adjournment of the hearing based on his medical condition. Although the Appeal Board turned down an initial adjournment request, it subsequently granted the adjournment of the appeal hearing after Captain Clark provided it with a medical note supporting his request.

[38] Shortly thereafter, Captain Clark filed the unfair labour practices complaint that underlies this application with the Board. The hearing of Captain Clark's appeal before the Appeal Board has yet to take place.

[39] Captain Clark acknowledges that union disciplinary decisions are subject to challenge through the union's internal appeal process. However, he says that he should not have to exhaust the union process before bringing his complaint before the Board in the circumstances of this case. While Captain Clark's arguments are somewhat difficult to follow, I understand his fundamental argument to be that given his medical condition, he should not be required to face the perpetrators of his harassment in an internal appeal process that is bound to be unfair.

[40] As noted at the outset, the Board declined to exercise its discretion to deal with Captain Clark's challenge to the disciplinary charges brought against him by ALPA because of his failure to exhaust his internal remedies. As will be explained below, I agree with ALPA that Captain Clark is essentially asking that the Board act in place of the Appeal Board and revisit the factual findings of the Hearing Board – something that is not the Board's role.

[41] Paragraphs 95(f) and (g) of the *Code* are directed at the internal affairs of unions and the discriminatory abuse of union powers. In recognition of a reluctance to interfere in internal union matters, Parliament provided an opportunity for union members and their unions to resolve disputes through unions' internal appeal processes. To this end, subsection 97(4) of the *Code* prohibits complaints alleging violations of these sections of the *Code* from being brought to the Board until internal appeal procedures have been exhausted: *Paul Horsley et al.*, 15 CLRBR (2d) 141.

[42] The Board does not sit in appeal from decisions made by union disciplinary bodies: *International Assn. of Machinists and Aerospace Workers (Re)*, 85 CLLC 16,013. The role of the Board is to ensure that discipline standards, including the basis for their application, the manner in which they are applied and the results of their application are free from discriminatory practices: *Wheadon (Re)*, 5 CLRBR (NS) 192.

[43] In accordance with subsection 97(5) of the *Code*, the Board is empowered to intervene in internal union affairs where it is satisfied that the actions or circumstances giving rise to the complaint are such that the complaint should be dealt with without delay. Access to the Board is also available where the union has not given the complainant "ready access" to an appeal procedure. The Board has typically only exercised its discretion under subsection 97(5) in exceptional circumstances. Access to the Board is not available merely because the complainants do not want to initiate the union appeal process.

[44] The Board's decision contains a lengthy and thorough review of the procedural history of Captain Clark's complaint. It concluded that ALPA had neither obstructed Captain Clark's access to the appeals process nor contributed to the delay in the hearing of his appeal, and that the reason that it had not yet taken place was because of Captain Clark's adjournment request. In addition to providing "ready access" to the union appeals process, the Board found that ALPA had also shown a willingness to accommodate Captain Clark's condition by allowing him to attend the hearing virtually. From this, the Board appears to have concluded that the facts of this case did not warrant its removal from the realm of internal union affairs and the bringing of it into the public interest domain: *Horsley et al.*, above.

[45] Captain Clark argues that the Board should be able to do anything that is equitable in order to fulfill the objectives of the *Code*. I agree with ALPA that had Parliament intended that the Board have unfettered discretion to hear complaints under subsection 97(5) of the *Code*, it would have said so. Instead, it identified two specific situations where the Board could grant relief against the statutory requirement that individuals exhaust their internal remedies before coming to the Board challenging internal union disciplinary measures – namely in urgent cases and in cases where the union is obstructing access to the appeal process. The Board quite reasonably found that neither situation was present in this case.

[46] Captain Clark nevertheless contends that forcing him to attend the appeal hearing would result in the unnecessary infliction of suffering when the decision of the Appeal Board would very likely not be fair and would simply affirm the decision of the Hearing Board. According to Captain Clark, ALPA had not given him "ready access" to the appeal process through its high-

handed, oppressive and discriminatory unfair practices. He submits that ALPA created the environment that caused his disability and rendered him medically unfit to participate in such a proceeding.

[47] Much of the medical evidence that Captain Clark endeavoured to rely on in this Court in support of his attempt to bypass the union appeal process was not actually before the Board at the time that it considered his complaint. As we ruled at the hearing, such evidence is inadmissible in an application such as this: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para. 19.

[48] Insofar as the information that was actually before the Board is concerned, much of what Captain Clark refers to as “medical evidence” is not evidence at all. It is second-hand information attributed to Captain Clark’s doctors that was contained in written submissions filed by counsel for Captain Clark at various stages of these proceedings, unsupported by doctors’ notes or reports.

[49] There were three doctors’ notes or letters before the Board that constitute actual medical evidence. One undated doctor’s letter primarily addressed Captain Clark’s ability to return to work and his need for accommodation, rather than his ability to attend an appeal hearing. It was thus of limited relevance to the exercise of the Board’s discretion under subsection 97(5) of the *Code*. There were two other notes from Captain Clark’s family doctor that did address his ability to attend before the Appeal Board, the later of which stated that he was unable to do so before at

least April 12, 2020, which was approximately eight months before the Board rendered its decision.

[50] All of that said, it is evident from the Board's reasons that it considered all of the medical information that was before it. Indeed, the Board expressly stated that it accepted Captain Clark's submissions with respect to his health "at face value".

[51] After carefully considering Captain Clark's submissions, the Board found as a fact that this was not an urgent case and that ALPA had done nothing to obstruct Captain Clark's access to the appeal process. Consequently, it declined to exercise its discretion to deal with this aspect of Captain Clark's complaint. Its reasons for doing so were justified, transparent and intelligible, thus satisfying the requirements of a reasonable decision set out by the Supreme Court in *Vavilov*, above.

V. Captain Clark's Allegations of Unfair Labour Practices on the Part of ALPA

[52] As was noted at the outset of these reasons, there were two aspects to Captain Clark's complaint to the Board. The first I have just dealt with – namely Captain Clark's attempt to challenge the disciplinary proceedings taken against him by ALPA. The second aspect of Captain Clark's complaint related to his claim that ALPA had committed unfair labour practices against him by sanctioning him for exercising his rights under the *Code*. Captain Clark also says that he was the subject of reprisals by ALPA for having previously filed a duty of fair representation complaint with the Board.

[53] Captain Clark also alleges that Jazz had engaged in unfair labour practices against him by interfering in union matters. I will deal with Captain Clark's allegations against Jazz in the next section of these reasons.

[54] In support of his complaint against ALPA, Captain Clark relies on paragraph 95(i) and sections 96 and 110 of the *Code*. Paragraph 95(i) prohibits discrimination against an employee by a union on the basis that the individual has testified or otherwise participated or may testify or otherwise participate in a proceeding under the Unfair Practices part of the *Code*.

[55] Section 96 is a general provision, prohibiting the intimidation or coercion of individuals to compel them to become or refrain from becoming or to cease to be a member of a union, whereas section 110 imposes an obligation on unions to provide members with certified copies of the union's financial statements.

[56] Unlike Captain Clark's attempt to challenge the disciplinary proceedings taken against him by ALPA, there was no question that he was entitled to bring this part of his complaint before the Board. The Board addressed these aspects of Captain Clark's complaint, concluding that his allegations of unfair labour practices on the part of ALPA had not been substantiated. Consequently, the Board dismissed his unfair labour practices complaint against ALPA.

[57] Insofar as Captain Clark's complaint under paragraph 95(i) was concerned, he asserted that he had been targeted by ALPA because of his involvement in an unfair labour practices

complaint filed by one of his colleagues, and because Captain Clark had previously filed a duty of fair representation complaint against ALPA.

[58] ALPA argued that the filing of a duty of fair representation complaint does not immunize a union member from sanction for conduct that is otherwise contrary to the member's obligations towards his union. It further submitted that the bringing of disciplinary proceedings against Captain Clark was completely unrelated to his involvement in his colleague's duty of fair representation complaint.

[59] After reviewing the record and the relevant jurisprudence, the Board found as a fact that Captain Clark had failed to establish the necessary linkage between his participation in the duty of fair representation complaint and the bringing of disciplinary charges against him. In coming to this conclusion, the Board noted, amongst other things, that the colleague's duty of fair representation complaint was filed *after* some of the disciplinary charges were filed against Captain Clark, and that it was therefore unlikely that there was a relationship between the two events.

[60] Indeed, the Board found that there was no evidence that ALPA had taken any action against Captain Clark because he had exercised his rights to participate in a proceeding under the unfair labour practices provisions of the *Code*. Captain Clark has not established that the Board's finding in this regard was unreasonable.

[61] The Board was also unable to find any evidence that “even remotely” approached coercion or intimidation of Captain Clark by ALPA contrary to section 96 of the *Code*. It will be recalled that section 96 prohibits the intimidation or coercion of individuals to compel them to become or refrain from becoming or to cease to be a member of a union. The Board found that there had been no interference with Captain Clark’s free exercise with respect to his choice regarding union representation. Captain Clark has failed to identify an error in this finding that would warrant this Court’s intervention.

[62] Insofar as the section 110 aspect of Captain Clark’s complaint was concerned, the Board found that Captain Clark had not been denied access to certified copies of ALPA’s financial statements. The financial statements he sought were not those of the union, but were rather those of a non-profit organization directed, he says, by the MEC. The Board found that the non-profit was not a trade union within the meaning of the *Code* and that section 110 of the *Code* therefore had no application with respect to the organization. Captain Clark has not argued that this finding was unreasonable.

[63] Given these findings, the Board concluded that Captain Clark’s complaints under paragraph 95(i) and sections 96 and 110 of the *Code* had not been substantiated. This aspect of his complaint was accordingly dismissed. As explained above, this was a conclusion that was reasonably available to the Board on the record before it.

VI. The Allegations of Unfair Labour Practices against Jazz

[64] Captain Clark also alleged that Jazz had engaged in various unfair labour practices against him contrary to sections 94(1)(a), 94(1)(b) and 94(3)(e) of the *Code*, which prohibit employer interference in union matters and employee intimidation.

[65] Paragraph 94(1)(a) prohibits employer interference in union formation or administration or the representation of employees by a union, whereas paragraph 94(1)(b) prohibits employers from contributing financial or other support to unions. Paragraph 94(3)(e) prohibits employers from intimidating employees to prevent them from testifying or otherwise participating in a proceeding under the unfair labour practices part of the *Code*, making a disclosure in a proceeding under that part, or making an application or filing a complaint under that part.

[66] While Captain Clark had made several allegations of unfair labour practices on the part of Jazz before the Board, he only advanced one argument before us. That is, Captain Clark argued that Jazz had violated the above-noted provisions of the *Code* because its Director of Flight Operations had provided evidence in the form of two emails that were entered into evidence in the disciplinary proceedings brought against Captain Clark by ALPA.

[67] The Board found as a fact that the emails in question reflected normal and factual communications in the course of employer/union discussions concerning labour relations and matters of mutual interest. Neither Jazz nor its employee had interfered with the administration of ALPA or the representation of Jazz employees by the union, nor had either contributed to the

support of the union with these emails. Having reviewed the emails in question, I am satisfied that the Board's findings in this regard were reasonably open to it.

VII. Conclusion

[68] The Board's reasons are lengthy and extremely thorough. It carefully considered all of the arguments advanced by Captain Clark, as well as the relevant statutory provisions and jurisprudence. Its analysis was responsive to Captain Clark's submissions, and was justified, transparent and intelligible, thereby satisfying the requirements of a reasonable decision set out by the Supreme Court in *Vavilov*, above.

[69] Captain Clark has not persuaded me that he was treated unfairly by the Board, nor has he been able to identify a reviewable error in any of the Board's findings that would warrant this Court's intervention. Consequently, I would dismiss the application for judicial review, with costs to each respondent, fixed in the amount of \$1,000.00 per respondent, all inclusive.

“Anne L. Mactavish”

J.A.

“I agree.

Johanne Gauthier J.A.”

“I agree.

René LeBlanc J.A.”

APPENDIX

*Canada Labour Code**Code canadien du travail*

R.S.C. 1985, c. L-2

L.R.C. (1985), ch. L-2

...

[...]

Determination without oral hearing**Décision sans audience**

16.1 The Board may decide any matter before it without holding an oral hearing.

16.1 Le Conseil peut trancher toute affaire ou question dont il est saisi sans tenir d'audience.

Unfair Practices**Pratiques déloyales****Employer interference in trade union****Intervention de l'employeur dans les affaires syndicales**

94 (1) No employer or person acting on behalf of an employer shall

94 (1) Il est interdit à tout employeur et à quiconque agit pour son compte :

(a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union; or

a) de participer à la formation ou à l'administration d'un syndicat ou d'intervenir dans l'une ou l'autre ou dans la représentation des employés par celui-ci;

(b) contribute financial or other support to a trade union.

b) de fournir une aide financière ou autre à un syndicat.

...

[...]

Prohibitions relating to employers**Autres interdictions relatives aux employeurs**

(3) No employer or person acting on behalf of an employer shall

(3) Il est interdit à tout employeur et à quiconque agit pour son compte :

...

[...]

(e) seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of a trade union or to refrain from

e) de chercher, notamment par intimidation, par menace de congédiement ou par l'imposition de sanctions pécuniaires ou autres, à obliger une personne soit à s'abstenir ou à cesser d'adhérer à un syndicat ou d'occuper un poste de dirigeant ou de représentant syndical, soit à s'abstenir :

(i) testifying or otherwise participating in a proceeding under this Part,

(i) de participer à une procédure prévue par la présente partie, à titre de témoin ou autrement,

(ii) making a disclosure that the person may be required to make in a proceeding under this Part, or

(ii) de révéler des renseignements qu'elle peut être requise de divulguer dans le cadre d'une procédure prévue par la présente partie,

(iii) making an application or filing a complaint under this Part;

(iii) de présenter une demande ou de déposer une plainte sous le régime de la présente partie;

Complaints to the Board

Plaintes au Conseil

97 (1) Subject to subsections (2) to (5), any person or organization may make a complaint in writing to the Board that

97 (1) Sous réserve des paragraphes (2) à (5), toute personne ou organisation peut adresser au Conseil, par écrit, une plainte reprochant :

(a) an employer, a person acting on behalf of an employer, a trade union, a person acting on behalf of a trade union or an employee has contravened or failed to comply with subsection 24(4) or 34(6) or section 37, 47.3, 50, 69, 87.5 or 87.6, subsection 87.7(2) or section 94 or 95; or

a) soit à un employeur, à quiconque agit pour le compte de celui-ci, à un syndicat, à quiconque agit pour le compte de celui-ci ou à un employé d'avoir manqué ou contrevenu aux paragraphes 24(4) ou 34(6), aux articles 37, 47.3, 50, 69, 87.5 ou 87.6, au paragraphe 87.7(2) ou aux articles 94 ou 95;

(b) any person has failed to comply with section 96.

b) soit à une personne d'avoir contrevenu à l'article 96.

...

[...]

Limitation on complaints against trade unions

Restriction relative aux plaintes contre les syndicats

(4) Subject to subsection (5), no complaint shall be made to the Board under subsection (1) on the ground that a trade union or any person acting on behalf of a trade union has failed to comply with paragraph 95(f) or (g) unless

(4) Sous réserve du paragraphe (5), la plainte reprochant à un syndicat ou à une personne agissant pour son compte d'avoir violé les alinéas 95f) ou g) ne peut être présentée que si les conditions suivantes ont été observées :

(a) the complainant has presented a grievance or appeal in accordance with any procedure that has been established by the trade union and to which the complainant has been given ready access;

a) le plaignant a suivi la procédure — présentation de grief ou appel — établie par le syndicat et à laquelle il a pu facilement recourir;

(b) the trade union

b) le syndicat a :

(i) has dealt with the grievance or appeal of the complainant in a manner unsatisfactory to the complainant, or

(i) soit statué sur le grief ou l'appel d'une manière que le plaignant estime inacceptable,

(ii) has not, within six months after the date on which the complainant first presented their grievance or appeal pursuant to paragraph (a), dealt with the grievance or appeal; and

(ii) soit omis de statuer, dans les six mois qui suivent la date de première présentation du grief ou de l'appel;

(c) the complaint is made to the Board not later than ninety days after the first day on which the complainant could, in accordance

c) la plainte est adressée au Conseil dans les quatre-vingt-dix jours suivant la date où le plaignant était habilité au plus tôt à le faire conformément aux alinéas a) et b).

with paragraphs (a) and (b), make the complaint.

Exception

(5) The Board may, on application to it by a complainant, determine a complaint in respect of an alleged failure by a trade union to comply with paragraph 95(f) or (g) that has not been presented as a grievance or appeal to the trade union, if the Board is satisfied that

(a) the action or circumstance giving rise to the complaint is such that the complaint should be dealt with without delay; or

(b) the trade union has not given the complainant ready access to a grievance or appeal procedure.

Prohibitions relating to trade unions

95 No trade union or person acting on behalf of a trade union shall

...

(f) expel or suspend an employee from membership in the trade union or deny membership in the trade union to an employee by applying to the employee in a discriminatory manner the membership rules of the trade union;

Exception

(5) Le Conseil peut, sur demande, statuer sur les plaintes visées au paragraphe (4) bien qu'elles n'aient pas fait l'objet du recours prévu s'il est convaincu :

a) soit que les faits donnant lieu à la plainte sont tels qu'il devrait être statué sur la plainte sans retard;

b) soit que le syndicat n'a pas donné au plaignant la possibilité de recourir facilement à une procédure de grief ou d'appel.

Interdictions relatives aux syndicats

95 Il est interdit à tout syndicat et à quiconque agit pour son compte :

[...]

f) d'expulser un employé du syndicat ou de le suspendre, ou de lui refuser l'adhésion, en lui appliquant d'une manière discriminatoire les règles du syndicat relatives à l'adhésion;

(g) take disciplinary action against or impose any form of penalty on an employee by applying to that employee in a discriminatory manner the standards of discipline of the trade union;

g) de prendre des mesures disciplinaires contre un employé ou de lui imposer une sanction quelconque en lui appliquant d'une manière discriminatoire les normes de discipline du syndicat;

...

[...]

(i) discriminate against a person with respect to employment, a term or condition of employment or membership in a trade union, or intimidate or coerce a person or impose a financial or other penalty on a person, because that person

i) de faire des distinctions injustes à l'égard d'une personne en matière d'emploi, de condition d'emploi ou d'adhésion à un syndicat, d'user de menaces ou de coercition à son encontre ou de lui imposer une sanction pécuniaire ou autre, pour l'un ou l'autre des motifs suivants :

(i) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part,

(i) elle a participé, à titre de témoin ou autrement, à une procédure prévue par la présente partie, ou peut le faire,

(ii) has made or is about to make a disclosure that the person may be required to make in a proceeding under this Part, or

(ii) elle a révélé — ou est sur le point de le faire — des renseignements en exécution ou prévision de l'obligation qui lui est imposée à cet effet dans le cadre d'une procédure prévue par la présente partie,

(iii) has made an application or filed a complaint under this Part.

(iii) elle a présenté une demande ou déposé une plainte sous le régime de la présente partie.

General prohibition

96 No person shall seek by intimidation or coercion to compel a person to become or refrain from

Interdiction générale

96 Il est interdit à quiconque de chercher, par des menaces ou des mesures coercitives, à obliger une

becoming or to cease to be a member of a trade union.

personne à adhérer ou à s'abstenir ou cesser d'adhérer à un syndicat.

Access to Financial Statements

Communication des états financiers

Financial statement of trade union and employers' organization

États financiers d'un syndicat et d'une organisation patronale

110 (1) Every trade union and every employers' organization shall, forthwith on the request of any of its members, provide the member, free of charge, with a copy of a financial statement of its affairs to the end of the last fiscal year, certified to be a true copy by its president and treasurer or by its president and any other officer responsible for the handling and administration of its funds.

110 (1) Les syndicats et les organisations patronales sont tenus, sur demande d'un de leurs adhérents, de fournir gratuitement à celui-ci une copie de leurs états financiers à la date de clôture du dernier exercice, certifiée conforme par le président ainsi que par le trésorier ou tout autre dirigeant chargé de l'administration et de la gestion de leurs finances.

Idem

Teneur

(2) Any financial statement provided under subsection (1) shall contain information in sufficient detail to disclose accurately the financial condition and operations of the trade union or employers' organization for the fiscal year for which it was prepared.

(2) Les états financiers doivent être suffisamment détaillés pour donner une image fidèle des opérations et de la situation financières du syndicat ou de l'organisation patronale.

Complaint to Board where failure to provide financial statement

Plainte

(3) The Board, on the complaint of any member of a trade union or employers' organization that it has failed to comply with subsection (1), may make an order requiring the trade union or employers' organization to file with the Board, within the time set out in the order, a statement in such form and with such

(3) Saisi d'une plainte d'un adhérent accusant son syndicat ou son organisation patronale d'avoir violé le paragraphe (1), le Conseil peut, par ordonnance, enjoindre au syndicat ou à l'organisation patronale de lui transmettre des états financiers, dans le délai et en la forme qu'il fixe.

particulars as the Board may determine.

Order of the Board

(4) The Board may make an order requiring a trade union or employers' organization to provide a copy of a statement filed under subsection (3) to such members of the trade union or employers' organization as the Board in its discretion directs.

Ordonnance

(4) Le Conseil peut en outre rendre une ordonnance enjoignant au syndicat ou à l'organisation patronale de fournir une copie des états financiers qui lui ont été transmis aux termes du paragraphe (3) à ceux de ses adhérents qu'il désigne.

Canada Industrial Relations Board Regulations, 2021

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...

Applications

10 An application filed with the Board, other than an application to which any of sections 12.1, 33, 34, 36, 37, 40 to 43 and 45 apply, must include the following information:

(a) the name, postal and email addresses and telephone and fax numbers of the applicant and of their counsel or representative, if applicable;

(b) the name, postal and email addresses and telephone and fax numbers of the respondent;

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[...]

Demandes

10 Toute demande déposée auprès du Conseil, sauf les demandes assujetties aux articles 12.1, 33, 34, 36, 37, 40 à 43 et 45, comporte les renseignements suivants :

(a) les nom, adresses postale et électronique et numéros de téléphone et de télécopieur du demandeur et de son avocat ou de son représentant, le cas échéant;

(b) les nom, adresses postale et électronique et numéros de téléphone et de télécopieur de l'intimé;

- | | |
|---|--|
| <p>(c) reference to the provision of the Code under which the application is being made;</p> | <p>c) la disposition du Code en vertu de laquelle la demande est faite;</p> |
| <p>(d) full particulars of the facts, of relevant dates and of grounds for the application;</p> | <p>d) un exposé détaillé des faits, des dates pertinentes et des moyens invoqués à l'appui de la demande;</p> |
| <p>(e) a copy of supporting documents;</p> | <p>e) une copie des documents déposés à l'appui de la demande;</p> |
| <p>(f) the date and description of any order or decision of the Board relating to the application;</p> | <p>f) la date et le détail de toute ordonnance ou décision du Conseil qui a trait à la demande;</p> |
| <p>(g) whether a hearing is being requested, and if so, the reasons for the request; and</p> | <p>g) la mention qu'une audience est demandée et, le cas échéant, les motifs en justifiant la tenue;</p> |
| <p>(h) a description of the order or decision sought.</p> | <p>h) le détail de l'ordonnance ou de la décision demandée.</p> |

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-22-21

STYLE OF CAUSE: DAVID CLARK v. AIR LINE
PILOTS ASSOCIATION,
INTERNATIONAL and
JAZZ AVIATION LP

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: OCTOBER 25-26, 2022

REASONS FOR JUDGMENT BY: MACTAVISH J.A.

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

DATED: DECEMBER 14, 2022

APPEARANCES:

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