Federal Court of Appeal | Cour d'appel fédérale

Date: 20240731

Docket: A-205-23

Citation: 2024 FCA 124

CORAM: **LASKIN J.A.**
GOYETTE J.A.
DAWSON D.J.C.A.

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY

Applicant

and

THE ATTORNEY GENERAL OF CANADA, TEAMSTERS CANADA RAIL CONFERENCE and UNIFOR

Respondents

Heard at Calgary, Alberta, on June 12, 2024.

Judgment delivered at Ottawa, Ontario, on July 31, 2024.

REASONS FOR JUDGMENT BY: DAWSON D.J.C.A.

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

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REASONS FOR JUDGMENT

DAWSON D.J.C.A.

[1] The Canadian Pacific Railway Company is a federally regulated employer. As such, it is required to comply with the provisions of the *Canada Labour Code*, R.S.C. 1985, c. L-2, including the provisions of Part II of the Code that govern occupational health and safety in federally regulated workplaces. Of particular relevance to this application is subsection 134.1(1)

of the Code, found in Part II, that requires CP to establish a Policy Health and Safety Committee (Committee) "[f]or the purposes of addressing health and safety matters that apply to [CP's] work, undertaking or business".

[2] Officials delegated by the Minister of Labour (Regulators) sought to attend a full-day meeting of the Committee to be held on March 10, 2020, at a CP worksite. CP responded by offering to allow the Regulators to attend only a portion of the meeting.

[3] On March 10, 2020, after the Committee meeting was already underway, the Regulators issued a Direction pursuant to subsection 145(1) of the Code. The Direction expressed the Regulators' opinion that CP had contravened subsection 143(*a*) of the Code by obstructing officials delegated by the Minister of Labour from attending the full-day Committee meeting. The Direction ordered CP to immediately terminate the contravention and take steps to ensure that the contravention did not continue or recur.

[4] CP appealed the Direction to the Canada Industrial Relations Board. It argued that the Direction was issued improperly because no underlying contravention of the Code supported the issuance of the Direction. As described in more detail below, CP submitted that the Code did not confer any power or duty upon the Minister to simply monitor the work of the Committee; hence, the enforcement powers of the Code were not available to the Regulators. CP also submitted that the Regulators failed to act in a procedurally fair manner before issuing the Direction.

[5] After conducting a *de novo* hearing, the Board rejected CP's submissions and confirmed the Direction (2023 CIRB 1082). In the Board's view, the Regulators did not "need a reason to initiate an intervention" (reasons, para. 58); the powers of the Regulators "under section 141(1)(a) of the Code do not rest on a precondition that there actually be a problem" (reasons, para. 59). Paragraph 141(1)(*a*) of the Code confers broad powers upon the Regulators that include "the power to randomly attend at workplaces to perform inspections… to see how things are going — without having to articulate any suspicions as a precondition to doing the inspection" (reasons, paragraph 59). It followed that, by denying the Regulators access to the Committee meeting, CP obstructed and prevented the Regulator from observing and inquiring into the operation of the Committee. The Board also rejected the argument that CP had been denied procedural fairness.

[6] CP now brings this application for judicial review of the Board's decision. Its primary submission is that the Board's decision is unreasonable because the Board failed to consider whether subsection 141(1) of the Code, or any other provision, granted authority to the Regulators to attend the Committee meeting. CP also argues that the Direction was not issued in a procedurally fair manner.

[7] The first issue for consideration therefore is whether the Board's decision is unreasonable.

[8] The parties properly acknowledge that reasonableness review applies to the Board's conclusion that paragraph 141(1)(*a*) of the Code entitled the Regulator to attend the entire Policy Committee meeting.

[9] Reasonableness review requires this Court to consider whether the Board's decision, "including both the rationale for the decision and the outcome" is unreasonable (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 83 [*Vavilov*]). Important considerations include:

i. an otherwise reasonable outcome is not reasonable if reached on an improper basis (*Vavilov* at para. 86);

ii. "an administrative decision-maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision" (*Vavilov* at para. 121); and

iii. the reasons of an administrative decision-maker must "meaningfully account for," and "meaningfully grapple with," the central issues and concerns raised by the parties (*Vavilov* at paras. 127, 128).

[10] Bearing these considerations in mind, I now turn to the first issue raised by CP before the Board, and the Board's consideration of the issue.

[11] In its reasons, the Board acknowledged CP's argument "that the Direction is unlawful because the regulators did not have the authority to demand attendance at the Policy Committee meeting" (reasons, para. 56). More specifically, CP argued that on its plain wording subsection 141(1) required that the Minister or her delegate exercise their powers while "carrying out the

Minister's duties" under the Code. The Regulators had confirmed to CP that they were not investigating a formal complaint; rather, they only wished to monitor the work of the Committee. CP argued that the Code did not confer any power or duty upon the Minister to monitor the work of the Committee. It followed that by seeking to monitor the work of the Committee, the Regulator was not "carrying out" any duty conferred on the Minister, and the powers set out in subsection 141(1) were not engaged.

[12] To respond to CP's argument, the Board considered the purpose of Part II of the Code, set out in section 122.1—namely, to prevent workplace accidents and injuries. The Board said this purpose must guide its interpretation of the Code (reasons, paras. 50–51). This required that Part II be interpreted liberally.

[13] The Board then considered subsection 141(1) of the Code and the powers assigned therein to the Minister's delegates. The Board observed that the Regulators were all ministerial delegates. As such, they were entitled to exercise the powers listed in subsection 141(1) of the Code (reasons, paras. 53–54).

[14] Of particular significance to the Board was paragraph 141(1)(a) of the Code, which at the relevant time provided:

> **141 (1)** Subject to section 143.2, the Minister may, in carrying out the Minister's duties and at any reasonable time, enter any work place controlled by an employer and, in respect of any work place, may
>
> > **(a)** conduct examinations, tests, inquiries, investigations and inspections or direct the employer to conduct them;

[15] The Board did not specifically consider the text of subsection 141(1) in light of CP's argument that the powers conferred by the provision were not engaged by a request to attend and monitor a meeting of the Committee.

[16] Instead, the Board referenced two prior decisions of the Occupational Health and Safety Tribunal of Canada: *Canadian National Railway Company v. Teamsters Canada Rail Conference*, 2013 OHSTC 29 [*Teamsters*], and *Canadian National Railway Company v. United Steelworkers*, 2020 OHSTC 6 [*Steelworkers*], quoting from both.

[17] On the basis of this jurisprudence, the Board then concluded:

> [58] From the statutory language and the jurisprudence cited above, one can discern that the Minister and their representatives do not need a reason to initiate an intervention. If they do not need a reason, then it follows that they do not need to provide the parties with a specific reason for their intervention.
>
> [59] Consequently, the regulators were not obliged to declare any specific reason for wanting to attend the Policy Committee meeting. The powers of a ministerial delegate under section 141(1)(a) of the *Code* do not rest on a precondition that there actually be a problem. They have the power to randomly attend at workplaces to perform inspections under section 141(1) of the *Code*—to see how things are going—without having to articulate any suspicions as a precondition to doing the inspection (see *Canadian National Railway Company* v. *United Steelworkers, supra*).

[18] While in an appropriate case, the Board may find assistance in past decisions to interpret the text of a provision in the Code, in this case the Board's reliance on these cases was misplaced because in neither case was the decision-maker required to consider the issue raised by CP: in the circumstances were the powers conferred by subsection 141(1) engaged because the ministerial delegates were "carrying out the Minister's duties"?

[19] In the *Teamsters* case, the Minister's delegate, a health and safety officer, was investigating a workplace fatality. Subsection 141(4) of the Code, as then enacted, imposed a mandatory requirement that a health and safety officer investigate every death that occurred while an employee was working. Therefore, no question arose before the Tribunal as to whether the investigation of a workplace fatality engaged the powers conferred by subsection 141(1).

[20] In the *Steelworkers* case, the ministerial delegate was investigating a formal complaint of workplace violence as then required by subsection 127.1(9) of the Code. Therefore, no question arose whether the delegate was "carrying out the Minister's duties" so as to engage subsection 141(1) of the Code. The question before the Tribunal was the scope of the powers conferred on the delegate—specifically, whether subsection 141(1) of the Code authorized the ministerial delegate to issue a direction that did not require the subject of the direction to bring itself into compliance with the Code or an associated regulation. Again, this was a different issue from that raised by CP. No question arose as to whether the facts of that case engaged the powers conferred by subsection 141(1). The Tribunal in *Steelworkers*, at paragraph 93 of its reasons, did acknowledge that, to exercise any power under subsection 141(1), a ministerial delegate must be "carrying out the Minister's duties." This was the very issue raised by CP but not answered by the Board, despite its reliance upon the *Steelworkers* case.

[21] This analysis of the Board's reasons demonstrates that the Board did not meaningfully grapple with a central issue raised by CP. It failed to specifically consider the text of subsection 141(1) when interpreting the provision and instead relied on a line of authorities that was inapt. What statutory duty were the Regulators purporting to exercise when they sought to monitor the

meeting of the Committee? The Board's failure to meaningfully grapple with this central question renders its decision is unreasonable.

[22] This conclusion makes it unnecessary to consider CP's argument that it was also denied procedural fairness. As the Board's consideration of the issue of procedural fairness was inextricably tied to its interpretation of subsection 141(1) of the Code, and as I would remit that question to the Board, I think it preferable that the entire matter be returned to the Board.

[23] For these reasons, I would allow CP's application for judicial review with costs, set aside the decision of the Board and return the matter to a differently constituted panel of the Board for redetermination in accordance with these reasons. Upon the consent of the parties, the style of cause should be amended to substitute the "Attorney General of Canada" for "Brenda Baxter, Head of Compliance" as a party respondent.

"Eleanor R. Dawson"
D.J.C.A.

"I agree
J.B. Laskin J.A."

"I agree.
Nathalie Goyette J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-205-23
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CONCURRED IN BY:	LASKIN J.A. GOYETTE J.A.
DATED:	JULY 31, 2024

APPEARANCES:

Douglas C. Hodson, K.C. Erica Klassen	FOR THE APPLICANT
Samar Musallam	FOR THE RESPONDENT, THE ATTORNEY GENERAL OF CANADA
Denis Ellickson	FOR THE RESPONDENT, TEAMSTERS CANADA RAIL CONFERENCE
Blake Scott	FOR THE RESPONDENT, UNIFOR

SOLICITORS OF RECORD:

MLT Aikens LLP Saskatoon, Saskatchewan	FOR THE APPLICANT
Shalene Curtis-Micallef Deputy Attorney General of Canada	FOR THE RESPONDENT, THE ATTORNEY GENERAL OF CANADA
CaleyWray Lawyers Toronto, Ontario	FOR THE RESPONDENT, TEAMSTERS CANADA RAIL CONFERENCE
Unifor Legal Department Toronto, Ontario	FOR THE RESPONDENT, UNIFOR