Federal Court of Appeal | Cour d'appel fédérale

Date: 20241113

Docket: A-306-23

Citation: 2024 FCA 187

CORAM: **BOIVIN J.A.**
LOCKE J.A.
LEBLANC J.A.

BETWEEN:

CASCADE AEROSPACE INC.

Applicant

and

UNIFOR

Respondent

Heard at Halifax, Nova Scotia, on November 13, 2024.
Judgment delivered from the Bench at Halifax, Nova Scotia, on November 13, 2024.

REASONS FOR JUDGMENT OF THE COURT BY: LEBLANC J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Halifax, Nova Scotia, on November 13, 2024).

LEBLANC J.A.

[1] The applicant, Cascade Aerospace Inc., seeks judicial review of a decision of the Canada Industrial Relations Board (the Board), dated October 16, 2023. In its decision, the Board granted the respondent's application for certification of a small group of employees occupying positions of "induction planners" within the applicant's workforce.

[2] The applicant's main objection to the respondent's certification application was that it was untimely, contrary to section 38 of the *Canada Industrial Relations Board Regulations, 2012*, SOR/2001-520 (the Regulations). Section 38 of the Regulations prohibits a trade union from filing a new application for certification in respect of the same or substantially the same bargaining unit "until six months have elapsed from the date on which its previous application was rejected".

[3] Here, the "previous application", according to the applicant, is an application made by the respondent pursuant to section 18 of the *Canada Labor Code*, R.S.C. 1985, c. L-2 (the Code). That application sought an order amending the bargaining unit description of its existing bargaining unit to include additional employees, including the induction planners. It was granted by the Board, with the exception, though, of the induction planners who were left out of the new description. The respondent filed the impugned certification application only six weeks after the date of this amending order. The applicant claimed that this filing was barred by section 38.

[4] The Board dismissed the applicant's objection on the ground that the section 38 bar only applies to previous applications for certification, not to other types of applications contemplated by the Code, as contended by the applicant.

[5] The applicant submits before us that the Board's decision is unreasonable because the Board failed to provide sufficient reasons to support its interpretation of section 38 of the Regulations. It says, based on *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (*Vavilov*), that it is not enough to merely repeat statutory language, summarize

arguments made by the parties and then state a peremptory conclusion, as the Board did in the present case. It further claims that *Vavilov* has signaled the end of the road for the Board's practice of not providing separate reasons on certification applications other than in novel or exceptional circumstances.

[6] There is no dispute between the parties that the Board's decision must be reviewed on the deferential standard of reasonableness, as set out in *Vavilov*.

[7] Although the Board's reasons are succinct and could have been more elaborate, we are all of the opinion that these reasons withstand scrutiny on reasonableness review. *Vavilov* instructs reviewing courts to examine the reasons provided by administrative decision-makers with "respectful attention" (*Vavilov* at para. 84), taking into account the "institutional context in which the decision was made" (*Vavilov* at para. 91). This entails varying levels of justification or explanation. It instructs reviewing courts as well to be "acutely aware" that administrative justice "will not always look like "judicial justice"" (*Vavilov* at para. 92). When it comes to statutory interpretation, administrative decision-makers are not expected to engage in a formalistic interpretation exercise in every case. Their task is rather to come up with an interpretation that is consistent with the text, context and purpose of the provision at issue (*Vavilov* at paras. 119-121). In so doing, they are not required "to explicitly address all possible shades of meaning of a given provision" and may find it "unnecessary to dwell on each and every signal of statutory intent in their reasons" (*Vavilov* at para. 122).

[8] Hence, the fact that a decision does not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, is not, in and of itself, a basis to set it aside (*Vavilov* at para. 91). Quite the opposite, in seeking to understand the reasoning process followed by the decision-maker, the reviewing court is entitled to consider the evidence and submissions that were before the decision-maker as well as its past decisions (*Vavilov* at para. 94). In other words, the reviewing court must look beyond the four corners of the administrative decision.

[9] With that in mind, we all agree that the Board provided responsive reasons when they are read in light of the record, of the Board's past decisions, of section 38 legislative history and of the Board's own particular institutional context. Here, this context is that of a highly specialized tribunal tasked with making decisions in a area where delays can hamper the realization of the Code's objectives (*Maritime Employers Association v. Syndicat des débardeurs (Canadian Union of Public Employees, Local 375)*, 2023 FCA 93 at para. 86). It is clear to us that the Board was alive to the central issue of the scope of section 38 and that it meaningfully grappled with it by resorting to the proper legal analytical framework, including the one applicable to the interpretation of bilingual enactments. Although, again, the Board's reasons could have been more elaborate, they exhibit a rational chain of analysis. As for the outcome of the decision that section 38 only applies to certification applications, it is reasonable in our view when one looks at the discrepancies between the French and English versions of the provision, which the Board was well aware of. It is consistent as well with prior decisions of the Board holding that the amendments brought to section 38 in 2001, which at the time unambiguously only applied to certification applications as conceded by counsel for the applicant, were not substantive.

[10] For all these reasons, and despite counsel for the applicant's able oral submissions, the applicant's application for judicial review is dismissed, with costs.

"René LeBlanc"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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APPEARANCES:

Rebecca Saturley	FOR THE APPLICANT
Blake Scott	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stewart McKlelvey Halifax, Nova Scotia	FOR THE APPLICANT
Unifor Legal Department Toronto, Ontario	FOR THE RESPONDENT