Federal Court of Appeal | Cour d'appel fédérale

Date: 20250220

Docket: A-311-23

Citation: 2025 FCA 42

CORAM: **BOIVIN J.A.**
RENNIE J.A.
LASKIN J.A.

BETWEEN:

LIBRARY OF PARLIAMENT

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Heard at Ottawa, Ontario, on February 20, 2025.
Judgment delivered from the Bench at Ottawa, Ontario on February 20, 2025.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on February 20, 2025).

BOIVIN J.A.

[1] The applicant, the Library of Parliament, seeks judicial review of specific portions of an interest arbitral award rendered on October 13, 2023 (*Public Service Alliance of Canada v. Library of Parliament*, 2023 FPSLREB 91) (the Arbitral Award) by a panel established by and for the Federal Public Sector Labour Relations and Employment Board (the Board), pursuant to

section 50 of the *Parliamentary Employment and Staff Relations Act,* R.S.C., 1985, c. 33 (2nd Supp.) (the Act).

[2] This matter arises in the context of interest arbitration, which is a form of binding arbitration that allows parties to settle the terms and conditions of a collective agreement after negotiations result in an impasse. This recourse is necessary as sections 73 and 74 of the Act prohibit any striking activity. Interest arbitration is driven by the replication principle, which was described by this Court in *Laurentian Pilotage Authority v. Corporation des Pilotes du Saint-Laurent Central Inc.*, 2018 FCA 117 at paragraph 62 as follows:

> [62] The replication principle in essence involves asking which party's position is the more reasonable. This is measured with reference to issues such as: the parties' bargaining history and prior patterns of conduct; the demonstrated need for a clause requested; at least in the private sector, the employer's economic viability; and the prevalence of similar provisions in other comparable agreements. These issues are the daily diet of labour adjudicators but are rarely ones that a court is called upon to examine.

[3] The Supreme Court in *C.U.P.E. v. Ontario (Minister of Labour),* 2003 SCC 29 at paragraph 53, distinguished grievance arbitration, which involves interpreting a previously agreed upon collective agreement, from interest arbitration, and noted that "[the] former is adjudicative" whereas "the latter is more or less legislative." Our Court later observed in *Public Service Alliance of Canada v. Canada (House of Commons),* 2023 FCA 110 at paragraph 8 that:

> "[…] interest arbitrators are afforded wide discretion to settle the terms of the parties' collective agreement, and the decisions they make are almost always policy determinations and rarely involve legal issues. Additionally, this Court has recognized that the need for finality, which animates the need for deference in

> labour cases generally, is particularly acute in interest arbitration cases" (*Laurentian Pilotage Authority v. Pilotes du Saint-Laurent Central Inc.*, 2018 FCA 117, 299 A.C.W.S. (3d) 235 at paras. 60-61, 63).

[4] In this case, the Arbitral Award concerns the collective agreements of two bargaining units: the Library Science (Reference) and Library Science (Cataloguing) Sub-groups in the Research and Library Services Group bargaining unit (LS), and the Library Technician Sub-group in the Research and Library Services Group and all employees in Clerical and General Services (CGS-LT) (Arbitral Award at para. 1).

[5] Before us, the applicant argues that the following portions of the Arbitral Award are unreasonable: the 1.0% wage adjustment for the LS group for 2023, Article 17.04 involving fractional entitlement, Article 18.05 involving time value of a designated paid holiday, Article 29.19 involving the French version of the grievance procedure for the LS group, and Article 39.01 (LS) /Appendix XX (CGS-LT) involving telework and remote work.

[6] Regarding the wage adjustment and the first three articles, the applicant essentially asks us to re-weigh the evidence, which is not our role as a reviewing court (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (*Vavilov*) at para. 125). This is especially true in the context of interest arbitration. Consequently, we are all of the view that the Board did not make a reviewable error with respect to the wage adjustment, fractional entitlement, time value of a designated paid holiday, and the French version of the grievance procedure as they were all in the range of reasonable outcomes.

[7] However, regarding the telework and remote work provision, the applicant properly put its jurisdictional objections before the Board, but the Board failed to address these objections in its reasons. The Board's decision to remit the telework and remote work provision to the parties for further negotiation with specific directives, and to remain seized of the matter for 90 days in the event that the parties do not come to an agreement, was unreasonable as it did not meaningfully consider a central argument raised at multiple instances by the applicant (*Vavilov* at para. 127).

[8] Indeed, although interest arbitration calls for deference on the part of reviewing courts, this is not to say that reviewing courts will rubberstamp reasons where a Board, in such an arbitration, has failed to address a party's central argument. Although it is trite that it is not necessary for administrative decision makers to consider each and every argument before them, *Vavilov* teaches that the parties' central arguments must be accounted for in administrative decisions (*Vavilov* at paras. 127-128).

[9] Here, in its written and oral submissions to the Board, the applicant objected to the inclusion of the telework and remote work provision in the arbitration, alleging such a provision exceeded the jurisdiction of the Board pursuant to subsections 5(3) and 55(2) of the Act. These subsections circumscribe the Board's jurisdiction, preserving certain rights of management and prohibiting certain matters from being dealt with in arbitration. Thus, while the Board is entitled to broad discretion to settle the terms of a collective agreement in the context of interest arbitration, as our Court has recognized the need for finality in this content, it cannot exercise its jurisdiction in such a way that would affect the rights of management. In the circumstances of

this case, the Board's task was to address the question of jurisdiction by providing a statutory interpretation of subsections 5(3) and 55(2) of the Act. The fact that it failed to do so leaves our Court with no ability to review the Board's exercise of jurisdiction with respect to the telework and remote work provision.

[10] For these reasons, the application will be allowed in part and the matter will be remitted to a differently constituted panel of the Board, solely on the issue of jurisdiction with respect to the telework and remote work provision. As success is divided, there will be no order as to costs.

"Richard Boivin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-311-23
STYLE OF CAUSE:	LIBRARY OF PARLIAMENT v. PUBLIC SERVICE ALLIANCE OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	FEBRUARY 20, 2025
REASONS FOR JUDGMENT OF THE COURT BY:	BOIVIN J.A. RENNIE J.A. LASKIN J.A.
DELIVERED FROM THE BENCH BY:	BOIVIN J.A.

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