Federal Court of Appeal | Cour d'appel fédérale

Date: 20250320

Docket: A-227-24

Citation: 2025 FCA 64

CORAM: **WOODS J.A.**
MONAGHAN J.A.
WALKER J.A.

BETWEEN:

EAST COAST HYDRAULICS & MACHINERY (2009) LIMITED

Applicant

and

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1976

Respondent

Heard at Halifax, Nova Scotia, on March 20, 2025.
Judgment delivered from the Bench at Halifax, Nova Scotia, on March 20, 2025.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Halifax, Nova Scotia, on March 20, 2025).

WOODS J.A.

[1] This is an application to judicially review an order of the Canada Industrial Relations Board issued December 7, 2023, which certified the respondent as the bargaining agent for a group of persons employed by the applicant as longshoring workers (Order). The applicant employer seeks to quash the Order solely on jurisdictional grounds – that is, on the basis that the

subject matter of the Order is within provincial jurisdiction, and so the Board had no authority to make the Order.

[2] The respondent, the International Longshoremen's Association, Local 1976, made the certification application in respect of a group of longshoring employees of the applicant, East Coast Hydraulics & Machinery (2009) Limited, who work at the Port of Mulgrave, Nova Scotia (Port). The application was made pursuant to subsection 24(1) of the *Canada Labour Code*, R.S.C. 1985, c. L-2.

[3] The respondent was granted certification as the bargaining agent for this group of the applicant's employees.

[4] The only question raised on this judicial review is whether the Board erred in taking jurisdiction and issuing the certification Order. The main provisions at issue are the divisions of federal and provincial powers in sections 91 and 92 of the *Constitution Act, 1867*. The question of jurisdiction is subject to correctness review: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 53, 55.

[5] The applicant did not have legal representation before the Board and the issue of jurisdiction was not raised by either party. In addition, the Board did not discuss jurisdiction in its brief Order granting certification. Rather, it appears that the Board assumed that because the workers were engaged in longshoring, the subject matter of the Order was within federal jurisdiction.

[6] In this Court, the applicant submits that the Board erred in taking jurisdiction since the labour relations of the longshoring employees fall within provincial jurisdiction: they are a severable group of employees working exclusively for fishing vessels, which do not constitute a federal undertaking. The respondent, on the other hand, submits that the Board made no error in issuing the Order and that the application should be dismissed.

[7] There are several significant judicial decisions which discuss the applicable legal framework. These include: *Northern Telecom v. Communications Workers*, 1979 CanLII 3 (SCC); *Northern Telecom v. Communication Workers*, 1983 CanLII 25 (SCC); *Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail)*, 2012 SCC 23 [*Tessier*], and *Jim Pattison Enterprises Ltd. v. British Columbia (Workers' Compensation Board)*, 2011 BCCA 35. Together they illustrate that the legal framework is complex and the determination of jurisdiction factually suffused.

[8] Based on these decisions, it is clear that labour relations in the longshoring industry do not always fall within federal jurisdiction. In *Tessier*, the Supreme Court of Canada instructed that "a stevedoring work or undertaking will be subject to federal labour regulation if it is integral to a federal undertaking in a way that justifies imposing exceptional federal jurisdiction": at para. 28. Accordingly, the Board should not have taken jurisdiction without considering these legal principles and erred in doing so.

[9] Although this Court can determine a question of jurisdiction, that is not appropriate in this case. The factual record before the Board is insufficient to support a finding that the Board

had jurisdiction. The inadequacy of the record is not surprising given that the issue of jurisdiction was not raised before the Board by the parties.

[10] Before this Court, the applicant sought to provide additional evidence relevant to the issue of jurisdiction by way of an affidavit from its co-owner and controller, Melissa Feltmate. This affidavit was not filed before the Board even though it could have been. It is generally not appropriate to introduce new evidence on an application for judicial review, especially when the evidence could have been submitted before the Board but was not: *Sharma v. Canada (Attorney General)*, 2018 FCA 48 at paras. 7-9; *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263 at paras. 13-28. This principle applies here, so it would not be proper for this Court to take the affidavit into account. In any event, even with the additional facts provided in this affidavit, the record would be insufficient to allow for the complex jurisdictional analysis required by the jurisprudence.

[11] As for the remedy, the applicant asks that we quash the Order. The respondent submits this is not appropriate and we should dismiss this application. We are not persuaded by the respondent's arguments.

[12] In conclusion, since the Board erred by taking jurisdiction without considering the relevant legal framework, we will allow the application for judicial review with costs to the applicant, set aside the Order, and refer the matter back to the Board for redetermination by a different panel.

"Judith Woods"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-227-24
STYLE OF CAUSE:	EAST COAST HYDRAULICS & MACHINERY (2009) LIMITED v. INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1976
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Bettina Quistgaard	FOR THE RESPONDENT

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