

Federal Court of Appeal



Cour d'appel fédérale

ADate: 20250320

Docket: A-244-24

Citation: 2025 FCA 65

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

BETWEEN:

CHRISTOPHER R. THERIAULT

Applicant

and

ATLANTIC TOWING LIMITED

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:

WALKER J.A.

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

WALKER J.A.

[1] The applicant, Mr. Theriault, seeks judicial review of a decision of the Canada Industrial Relations Board (the Board) (2024 CIRB 1143): (1) refusing Mr. Theriault's request to amend his complaint of unjust dismissal by the respondent, Atlantic Towing Limited (Atlantic Towing); and (2) dismissing his complaint for lack of jurisdiction.

[2] Mr. Theriault was dismissed from his employment as a crew member on board Atlantic Towing's vessels effective January 6, 2022 due to non-compliance with the company's mandatory COVID-19 vaccination policy (the Policy). Prior to his dismissal, Mr. Theriault had requested, but was refused, an exemption from the vaccination requirement on religious grounds.

[3] Mr. Theriault filed his unjust dismissal complaint on April 4, 2022, pursuant to subsection 240(1) of Part III the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the Code).

[4] On March 4, 2024, the Board informed the parties that it had identified a jurisdictional question arising from paragraph 242(3.1)(b) of the Code, a provision prohibiting the Board from considering any complaint for which a procedure for redress was provided under Part I or Part II of the Code or under any other Act of Parliament. The Board requested submissions on the issue from the parties.

[5] In response, Mr. Theriault's counsel acknowledged that the prohibition set out in paragraph 242(3.1)(b) extends to redress under the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (*CHRA*), whether or not a complainant takes steps to access such redress. Counsel stated that, in the circumstances, Mr. Theriault wished to withdraw any part of his complaint referencing "a failure to accommodate" and to proceed solely on the basis that he should have been exempted from mandatory vaccination for practical reasons (he worked on a small ship and would test daily) or placed on unpaid leave of absence.

[6] In its decision, the Board first refused Mr. Theriault's request to amend his complaint, finding that the essential nature of the complaint was that Atlantic Towing "unjustly dismissed [Mr. Theriault] by refusing his request for a religious exemption from vaccination".

[7] The Board then considered the two questions to be addressed in determining the application of paragraph 242(3.1)(b) of the Code (*Hayes v. Royal Bank of Canada*, 2021 CIRB 961 (*Hayes*); *Brown v. Warren Gibson Limited*, 2020 CIRB 948): (a) whether a complaint would be essentially the same in the *CHRA* redress procedure; and (b) whether the *CHRA* procedure would provide real redress to a complainant. The Board answered both questions positively, found that it was required to decline jurisdiction and that it could not exercise its residual jurisdiction to consider the complaint in the absence of a referral from the Canadian Human Rights Commission.

[8] In this application for judicial review, Mr. Theriault argues that the decision is unreasonable and that the Board's two-year delay in raising its jurisdictional concern was unfair. We agree with the parties that the standard of review of the Board's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65).

[9] We do not find Mr. Theriault's arguments persuasive. The Board did not make a reviewable error in centring its analysis on whether the amendment would change the essential nature of the complaint. The Board carefully reviewed the documents in the record and explained its reasons for concluding that the essential nature of Mr. Theriault's complaint was a claim for unjust dismissal on the part of Atlantic Towing "by refusing his request for a religious exemption

from vaccination”. We are of the view that the Board reasonably read Mr. Theriault’s references to possible options to termination in his 2022 submissions as tangential to his request for religious accommodation, and not as a distinct basis of unjust dismissal.

[10] Mr. Theriault also submits that the Board’s two-year delay in alerting the parties to its jurisdictional concern was unfair. He emphasizes that the concern was identified long after the expiry of the applicable time periods for filing a complaint under the *CHRA*, with the result that the alternative relief did not provide real redress.

[11] Mr. Theriault has identified no procedural requirement that the Board act within a certain time period. As the respondent notes, the Board has previously addressed the issue of delay and its impact on alternative relief (*Hayes* at para. 29): “... the potential prejudice to the complainant regarding the timeliness of a human rights complaint is not a relevant consideration for the purpose of applying section 242(3.1)(b)”. We conclude that the Board’s delay, while unfortunate, was not unfair and did not breach the requirements of procedural fairness.

[12] Accordingly, this application for judicial review will be dismissed with costs.

“Elizabeth Walker”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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