Federal Court of Appeal | Cour d'appel fédérale

Date: 20250918

Docket: A-26-22

Citation: 2025 FCA 167

CORAM: **STRATAS J.A.**
MONAGHAN J.A.
GOYETTE J.A.

BETWEEN:

RICHARD FEARING

Applicant

and

CANADA COUNCIL OF TEAMSTERS and GARDAWORLD CASH SERVICES CANADA CORPORATION

Respondents

Heard at Toronto, Ontario, on September 17, 2025.

Judgment delivered at Toronto, Ontario, on September 18, 2025.

REASONS FOR JUDGMENT BY: STRATAS J.A.

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

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] Mr. Fearing seeks to quash two decisions of the Canada Industrial Relations Board: the original decision on August 19, 2021 (2021 CIRB LD 4551) and a reconsideration decision on December 17, 2021 (2021 CIRB LD 4615).

[2] In its first decision, the Board found that Mr. Fearing's union did not breach its duty of fair representation to Mr. Fearing. Mr. Fearing's union refused to advance certain of his grievances. But the Board found that Mr. Fearing failed to cooperate with the union.

[3] That finding, central to the Board's first decision, is a finding of fact. Under reasonableness review, findings of fact are extremely difficult to set aside. Circumstances where that can happen include findings made without any evidence in support, improper inferences, illogic or irrationality, and the like. Here, we have nothing like that. Having found that that Mr. Fearing failed to cooperate with the union, Mr. Fearing's complaint had to be dismissed based on the Board's authorities: *e.g.*, *Lamolinaire,* 2009 CIRB 463.

[4] I see nothing in the reconsideration decision that is unreasonable. Like the first decision, it was supportable on the evidence and the Board's jurisprudence.

[5] In oral argument, Mr. Fearing frequently encouraged this Court to revisit the merits of the Board's decisions. But an application for judicial review is not a re-hearing of the merits.

[6] Mr. Fearing also submits that the Board was unreasonable in excluding certain surreptitious audio recordings that he made. Here again, the Board was reasonable. The Board can reject evidence "in its discretion" and "as it sees fit" whether or not admissible in a court: *Canada Labour Code*, R.S.C. 1985, c. L-2, s. 16(c). Drawing on its labour relations experience and expertise and its earlier decision in *Valenti and CUPW, Re,* 2018 CIRB 866 at paras. 8-11, the Board found that the regular admission of surreptitious recordings into its proceedings would

be damaging to labour relations. The Board formulated a test for admission, a fair and supportable one, applied it to Mr. Fearing's case and ruled that Mr. Fearing's surreptitious recordings were inadmissible.

[7] Mr. Fearing raises various procedural fairness arguments, all of which are without merit. In both the initial proceeding and the reconsideration, the Board gave Mr. Fearing a full opportunity to prosecute his case. Further, in oral argument, Mr. Fearing alleged deliberate and conspiratorial conduct by the Board to frustrate his case. There is no evidence in the record to support this. Finally, Mr. Fearing complains that he was not afforded an oral hearing. In this case, it was reasonable for the Board to find that an oral hearing was unnecessary and decide on the basis of written submissions. Under s. 16.1 of the *Code*, it could do so. In any event, Mr. Fearing stated on a Board complaint form that he did not want an oral hearing.

[8] Mr. Fearing also alleges that one of the panel members was biased because he was previously an officer of the union.

[9] Panel members on the Board bring with them their backgrounds and experiences, some labour-side, some management-side. This infuses the Board with knowledge and experience in this specialized area from both sides. In this case, the fact that a panel member once served on the respondent union is not necessarily and by itself evidence of bias. By way of analogy to the judicial context, after a suitable "cooling-off period", judges can and do hear cases prosecuted or defended by law firms in which they were once a partner.

[10] The test for bias is a high one: *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369. The test is whether the reasonable, fully informed person, thinking the matter through, would conclude that the relevant panel member was unable to act fairly and impartially. I am not persuaded that this test has been met: on the record filed before us concerning the two decisions under review, there was a "cooling-off period" and I am not persuaded that its length was inadequate.

[11] In any event, even if bias or some procedural flaw were present, the remedy of quashing the Board's decision and remitting it back for re-decision would serve no practical use. On this record, the finding that the union did not breach its duty of fair representation by declining to act for Mr. Fearing is inevitable. Mr. Fearing failed to cooperate with the union. In this sort of situation, the remedy of quashing and remittal back is not available: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 142, citing, among others, *Sharif v. Canada (Attorney General)*, 2018 FCA 205 and *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, 2017 FCA 45.

[12] Thus, there are no grounds to interfere with either of the Board's decisions.

[13] Therefore, I would dismiss the application with costs.

"David Stratas"
J.A.

"I agree.
K.A. Siobhan Monaghan J.A."

"I agree.
Nathalie Goyette J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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PLACE OF HEARING:	TORONTO, ONTARIO
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CONCURRED IN BY:	MONAGHAN J.A. GOYETTE J.A.
DATED:	SEPTEMBER 18, 2025

APPEARANCES:

Richard Fearing	FOR THE APPLICANT (UNREPRESENTED) (BY VIDEOCONFERENCE)
Katherine Ferreira	FOR THE RESPONDENT CANADA COUNCIL OF TEAMSTERS
Gerald Griffiths	FOR THE RESPONDENT GARDAWORLD CASH SERVICES CANADA CORPORATION

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