

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130625

Docket: A-460-12

Citation: 2013 FCA 169

**CORAM: SHARLOW J.A.
DAWSON J.A.
STRATAS J.A.**

BETWEEN:

GÁBOR LUKÁCS

Appellant

and

**CANADIAN TRANSPORTATION AGENCY
and PORTER AIRLINES INC.**

Respondents

Heard at Halifax, Nova Scotia, on June 25, 2013.

Judgment delivered from the Bench at Halifax, Nova Scotia, on June 25, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Halifax, Nova Scotia, on June 25, 2013)

DAWSON J.A.

[1] The appellant, Mr. Lukács, appeals from an interlocutory decision of the Canada Transportation Agency. This Court granted leave to appeal the issue of whether the Agency erred in law by rendering an interlocutory decision without a quorum of at least two members of the Agency.

[2] A preliminary issue was raised by the respondent Porter Airlines Inc.: is the appeal moot and, if so, should this Court exercise its discretion to hear the appeal?

[3] The mootness issue arises on the following facts. The appellant filed a complaint with the Agency in respect of Porter's International Tariff Rule 18, which relates to its liability for damages and expenses caused due to flight delays or cancellations. In response, Porter sought a 60 day extension in which to file its answer. The appellant opposed Porter's request for an extension and sought an order staying the impugned tariff pending adjudication of his complaint. A single member of the Agency granted a 30 day extension to Porter and refused the appellant's request for a stay (LET-C-A-92-2012).

[4] The appellant then filed a motion asking that at least two members of the Agency review the legal status of LET-C-A-92-2012 (on the ground that it was decided by a single member of the Agency) and order that Chairman Hare, who made the impugned order, recuse or disqualify himself. In LET-C-A-126-2012 Chairman Hare dismissed the motion. This is the decision under appeal.

[5] After this Court granted leave to appeal the interlocutory decision, the Agency issued its final decision in respect of the appellant's complaint. A portion of Porter's International Tariff Rule 18 was disallowed by the Agency. This decision was made by two members of the Agency, including Chairman Hare. No application was made for leave to appeal this decision.

[6] The appellant argues that the present appeal is not moot because the result of the appeal will affect the validity of both the final decision and also another proceeding before the Agency.

[7] We disagree. The Agency has rendered its final decision and there was no application for leave to appeal that decision. The order under appeal in large part considered the propriety of the previous order that granted an extension to Porter to file its answer and refused to stay the impugned tariff while the complaint was adjudicated. After the issuance of the final decision no practical purpose would be served by considering the validity of the extension and stay refusal.

[8] Chairman Hare's refusal in the decision under appeal to recuse himself is not relevant to the validity of the final decision. That decision was never challenged by the appellant and an appeal from the Chairman's interlocutory refusal to recuse himself cannot be used to collaterally attack the Agency's final decision.

[9] The fact that the issue of the validity of decisions made by one member may remain live in other cases before the Agency does not prevent that issue from being moot between these parties.

[10] Having found the appeal to be moot, it is necessary to consider whether we should exercise our discretion to hear this appeal, notwithstanding its mootness. The relevant factors to be considered are:

1. Is there a continued adversarial relationship?
2. Do concerns over judicial economy trump the potential impact of the decision under appeal?
3. Will the exercise of discretion be seen as an intrusion into the legislative branch?

[11] We agree that there is a continued adversarial relationship between the parties. Written memoranda have been filed and the parties are ready to argue the underlying appeal if it is not dismissed for mootness. In our view, however, the determinative factor is concern over judicial economy.

[12] The Agency's internal policy under which the decision in issue was made by a single member has been rescinded. An amendment to the Canada Transportation Agency General Rules which provides for a single member quorum is pending. These factors militate against considering the moot question of the validity of the interlocutory decision under appeal.

[13] The appellant argues that the pending amendments to the General Rules are invalid. In our view this raises a new legal issue that could raise new legal arguments by the respondents that are outside the scope of the issue on which leave was granted. The Agency seeks to uphold the internal policy as a valid exercise of the Chairman's authority under section 13 of the *Canada Transportation Act*, S.C.1996, c.10 (Act). The validity of the proposed rules would appear to depend upon whether the rules are instruments that fall within subsection 36(1) of the Act, which requires regulations made by the Agency to be approved by the Governor-in-Council. This is an issue that does not arise on the facts of this case. Therefore, we express no opinion upon the issue.

[14] Accordingly, in the exercise of our discretion we decline to consider the appeal.

[15] The Agency filed its own motion to dismiss the appeal on the ground of mootness. It is unnecessary for us to address either the merits or the appropriateness of the decision-maker bringing such a motion.

[16] Accordingly, despite the very articulate submissions of the appellant, the appeal will be dismissed without costs.

“Eleanor R. Dawson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-460-12

**(APPEAL FROM A DECISION OF THE CANADIAN TRANSPORTATION AGENCY
DATED AUGUST 9, 2012)**

STYLE OF CAUSE:

Gábor Lukács v. Canadian
Transportation Agency and Porter
Airlines Inc.

PLACE OF HEARING:

Halifax, Nova Scotia

DATE OF HEARING:

June 25, 2013

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW, DAWSON AND
STRATAS J.J.A.

DELIVERED FROM THE BENCH BY:

DAWSON J.A.

APPEARANCES:

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ON HIS OWN BEHALF

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