Cour d'appel fédérale | Federal Court of Appeal

Date: 20140310

Dockets: A-447-12
A-118-13

Citation: 2014 FCA 61

CORAM: **GAUTHIER J.A.**
TRUDEL J.A.
MAINVILLE J.A.

BETWEEN:

BRIAN CADIEUX

Applicant

and

AMALGAMATED TRANSIT UNION, LOCAL 1415

Respondent

and

GREYHOUND CANADA TRANSPORTATION CORP.

Third Party

Heard at Montréal, Quebec, on January 16, 2014.

Judgment delivered at Ottawa, Ontario, on March 10, 2014.

REASONS FOR JUDGMENT BY: MAINVILLE J.A.

CONCURRED IN BY: GAUTHIER J.A.
TRUDEL J.A.

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REASONS FOR JUDGMENT

MAINVILLE J.A.

[1] We are seized with two applications for judicial review. The first one concerns a decision dated September 21, 2012, by the Canada Industrial Relations Board (Board), bearing neutral citation 2012 CIRB 656 (initial decision). That decision dismissed the complaint made by the applicant, Brian Cadieux, that alleged that his bargaining agent, the Amalgamated Transit Union,

Local 1415 (Union), the respondent in this case, breached its duty of representation, thus infringing section 37 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (Code). The second application for judicial review concerns the Board's decision dated February 27, 2013, bearing neutral citation 2013 CIRB 676 (reconsideration decision), dismissing the application for reconsideration of the initial decision.

[2] I would allow the two applications for judicial review for the reasons below. A copy of the reasons will be placed in the files for dockets A-447-12 and A-118-13.

Facts and background

[3] The applicant was employed by the third party, Greyhound Canada Transportation Corp. (Greyhound), as a bus driver from December 3, 2008, until his termination on April 20, 2011.

[4] During the month of August 2010, he was suspended for five days on the ground that he did not respect the minimum rest periods during his assignment as a bus driver with the Royal Canadian Mounted Police at the G-8 Summit in Toronto (see the Applicant's Record (AR) at pages 61-62). On September 6, 2010, the Union filed a grievance in relation to that suspension (see AR at page 65). That grievance was taken to arbitration but was ultimately settled by the Union prior to the hearing before the arbitrator. The settlement was reached without the applicant's consent and after the applicant's employment was terminated by Greyhound.

[5] A few months after that suspension, that is, on April 20, 2011, Greyhound terminated the applicant's employment on the ground that he was still not respecting the minimum rest periods

imposed on drivers and that he was not correctly recording his work hours in his log (see AR at pages 66 to 68). The Union also filed a grievance in relation to that termination (see AR at page 70), but then refused to take that grievance to arbitration. The Union's bylaws permit its members to accept or refuse to take a grievance to arbitration after obtaining a recommendation in that respect from the Union's executive board.

[6] Articles 7b and 7c of the Union's bylaws provide the following:

7. GRIEVANCES	**7. GRIEFS**
. . .	[...]
b. At the last step of the grievance procedure and prior to the membership voting on arbitration, the member will present his case to the Executive Board, orally or in writing, at their regular meeting. Should the member not make a presentation to the Executive Board, the Executive Board will render its recommendation based on the evidence on file.	b. Au dernier palier de la procédure de règlement des griefs et avant que les membres se prononcent sur l'arbitrage, le membre doit défendre sa cause devant le comité exécutif, de vive voix ou par écrit, dans le cadre d'une réunion régulière. Si le membre ne fait pas de présentation au comité exécutif, ce dernier fonde sa recommandation sur les éléments de preuve au dossier.
c. The membership will vote by secret ballot at the general meeting as to whether to proceed to arbitration on any grievance involving the interest of an individual member. A simple majority will rule. Arbitration votes will be held only in the cities of Toronto, London and Ottawa for the Greyhound bargaining unit. . . .Only members of the bargaining unit affected may vote on the arbitration.	c. Les membres se prononceront dans le cadre d'un vote secret à l'occasion des assemblées générales à savoir s'il faut renvoyer à l'arbitrage tout grief touchant les intérêts d'un membre. La majorité simple l'emportera. Les votes relatifs à l'arbitrage auront lieu uniquement dans les villes de Toronto, de London et d'Ottawa pour l'unité de négociation de Greyhound […] Seuls les membres appartenant à l'unité de négociation concernée peuvent voter relativement à l'arbitrage.
(AR at page 221)	(Board's translation, at paragraphs 24 and 25 of the initial decision)

[7] According to the applicant, he was not informed in a timely manner of the meeting held by the Union's executive board during which his termination grievance was discussed. The applicant also submits that he could have participated via telephone in the members' meeting held in Ottawa on June 15, 2011, but that the Union did not give him the opportunity to present his case before the members in that manner. According to the Union, the applicant was informed of those meetings in a timely manner, but declined to attend so as to defend his case. In any event, the Union's executive board did not recommend that the termination grievance be taken to arbitration, and the members accepted that recommendation by a vote of 17 to 14 (see AR at pages 72 and 163).

[8] The applicant filed a complaint with the Board on or around September 30, 2011, on the primary ground that the Union [TRANSLATION] "did not fulfill its duty of fair and equitable representation in [his] termination case" (AR at page 74).

[9] On November 2, 2011, the Union president informed the applicant that the grievance in relation to his five-day suspension had been settled and that the file was closed (AR at page 165). A cheque from Greyhound in the amount of $984.64 accompanied that letter (AR at page 167). The applicant maintains that he never cashed that cheque.

Board's initial decision

[10] The Board decided to issue a decision on the applicant's complaint by relying on the documentation on file and without holding a hearing (see initial decision at paragraph 1). However, given that the Union and the applicant presented very different versions about the applicant's involvement in the executive board meeting and in the Union members' meeting at which his

termination grievance was discussed, the Board appointed an industrial relations officer to carry out an investigation under paragraph 16(*k*) of the Code. The Board also gave the applicant and the Union the opportunity to comment on the officer's investigation report (see initial decision at paragraphs 26 and 27).

[11] Based on that report, the Board found that the applicant knew that the executive board meeting and the Union members' meeting were going to take place and chose to not participate (see initial decision at paragraphs 56, 57 and 58). Based on that finding, the Board decided to dismiss the applicant's complaint. The only ground for dismissal stated in the initial decision is that the applicant's refusal to participate in the meetings at issue precluded the Board from finding that the Union acted in a manner that was arbitrary, discriminatory or in bad faith. The Board's reasoning in this regard is clearly stated in paragraph 63 of the initial decision:

> [63] Mr. Cadieux's decision not to participate, despite receiving sufficient notice, prevents the Board from finding that the [union] acted in an arbitrary, discriminatory or bad faith manner. The Board will never know how the [union]'s process would have unfolded if Mr. Cadieux had exercised his right to participate and raised any concerns he had.

[12] It is on this same ground that the Board also refused to consider the recordings, submitted by Mr. Cadieux, of various meetings, in particular, a recording made on June 15, 2011, during the meeting in Ottawa for Union members to vote on whether to take the termination grievance to arbitration. The Board also stated the following in that respect at paragraph 45 of its initial decision:

> [45] The Board has not listened to the surreptitious recordings, nor read what appear to be Mr. Cadieux's purported transcripts of those recordings. The Board did not need to rule on the [union]'s admissibility objection given its conclusion that Mr. Cadieux had received sufficient notice of the arbitration vote. His decision not to participate allowed the Board to decide this case.

Board's reconsideration decision

[13] The applicant requested that the initial decision be reconsidered under section 18 of the Code.

[14] As his first ground of reconsideration, the applicant maintained that the information in the industrial relations officer's report was obtained from unsworn persons and without the presence of the parties. Relying on the decision of this Court in *Grain Services Union (ILWU-Canada) v. Freisen*, 2010 FCA 339, 414 N.R. 171, the applicant therefore argued that, since the information so obtained was contradictory, the Board could not rule on the matter without a hearing during which each party could produce the evidence it deemed relevant.

[15] The Board rejected the first ground for two main reasons.

[16] First, the Board pointed out (at paragraphs 46 and 47 of the reconsideration decision) that contradictory evidence in the context of a complaint made under section 37 of the Code does not require that a hearing be held. The Board added that a very large majority of those complaints are decided without an oral hearing. The Board therefore found (at paragraph 49 of the reconsideration decision) that the "original panel considered all of the information and submissions in making its decision; it is not a reconsideration panel's role to second-guess the resulting assessment of the facts."

[17] Second, the Board found (at paragraphs 50 and 52 of the reconsideration decision) that, in any case, "[u]nder the union's bylaws, a grievor's participation at such meetings is not obligatory,

and the union was entitled to proceed with its consideration of his grievance whether he was present or not", "[h]ence, it was not mandatory for the applicant to attend the executive board meeting of June 1, 2011."

[18] As his second ground of reconsideration, the applicant contended that the Board did not listen to the recording of the members' meeting held on June 15, 2011, and was thus deprived of a relevant piece of evidence. The Board rejected this second ground for the following reasons (at paragraph 55 of the reconsideration decision):

> In the original proceedings, the union had objected to the introduction of the recording and/or transcripts of the recording. The Board did not formally rule on the union's objection, but it also did not listen to the recording. Although the Board has discretion to accept any evidence it sees fit, there is an inherent concern regarding recordings that are made without the knowledge or consent of the other party. The Board has established a protocol for dealing with surreptitiously recorded evidence (see *D.H.L. International Express Ltd.* (1995), 99 di 126; and 28 CLRBR (2d) 297 (CLRB no.1147)). In this case, the applicant was unable or unwilling to identify the person who made the recording or the circumstances in which it came into his possession. Consequently, it was not improper for the Board to refuse to consider the recording.

[19] The third ground of reconsideration raised by the applicant was that, in the Board's initial decision, it did not assess the Union's conduct but based its decision instead on the applicant's conduct. The Board did not directly address that ground in its reconsideration decision.

Issues raised in the applications for judicial review

[20] The applicant essentially contends that the Board failed to exercise its jurisdiction under section 37 of the Code and rendered an unreasonable decision in the initial decision by failing to assess the Union's conduct in its handling of his termination grievance, and by instead basing its

decision exclusively on the issue of the applicant's absence from the executive board meeting and the meeting of the Union members.

[21] The applicant adds that the Board would have also breached its duty of procedural fairness in the initial decision (i) by refusing to consider the recordings of the meetings submitted by the applicant, and (ii) by not holding a hearing to rule on a determinative issue based on contradictory testimonies and the credibility of witnesses.

[22] Finally, the applicant maintains that the Board's reconsideration decision is unreasonable in that the reconsideration panel did not intervene to correct those errors.

Analysis

Standard of review

[23] It is well established that a decision by the Board under section 37 of the Code is reviewed on the reasonableness standard: *Télé-mobile Co. v. Telecommunications Workers Union*, 2004 FCA 438, [2005] 2 F.C.R. 727 at paragraphs 44 to 47; *Grain Services Union (ILWU-Canada) v. Freisen*, above, at paragraph 31; *McAuley c. Chalk River Technicians and Technologists Union*, 2011 FCA 156 at paragraph 13. Reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47.

[24] However, the standard of correctness applies to a breach of procedural fairness: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at paragraph 43; *Guan v. Purolator Courier Ltd.*, 2010 FCA 103 at paragraph 12.

First issue: Is the Board's initial decision unreasonable?

[25] In its initial decision, the Board based its decision on the principle that the applicant's lack of participation in the executive board meeting and in the Union members' meeting was a bar to a finding that the Union acted in a manner that was arbitrary, discriminatory or in bad faith under section 37 of the Code. The applicant has convinced me that that was an unreasonable decision.

[26] Section 37 of the Code sets out a union's duty of fair and equitable representation, and it reads as follows:

> **37.** A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.
>
> **37.** Il est interdit au syndicat, ainsi qu'à ses représentants, d'agir de manière arbitraire ou discriminatoire ou de mauvaise foi à l'égard des employés de l'unité de négociation dans l'exercice des droits reconnus à ceux-ci par la convention collective.

[27] The law surrounding a union's duty of fair and equitable representation regarding a decision on whether to take a grievance to arbitration is very simple.

[28] Unless otherwise specified in a collective agreement, an employee generally does not have the right to take his or her grievance to arbitration without the union's consent, even for a

termination. That is the case here. Given the exclusivity granted to a union for the representation of a bargaining unit, the union cannot therefore act in a manner that is arbitrary, discriminatory or in bad faith towards any of the employees in the unit who are exercising their rights under a collective agreement, including their right to a grievance and to arbitration. In determining whether a grievance should be filed, or whether a filed grievance should be taken to arbitration, a union's conduct is measured by its investigation of the circumstances surrounding the grievance and its assessment of the likelihood of success at arbitration.

[29] As a result, a union's conduct could be deemed arbitrary if the union only superficially considers the facts and or merits of the grievance, if it does not investigate to discover the circumstances surrounding the grievance, or if it fails to make a reasonable assessment of the likelihood of success of the grievance at arbitration.

[30] The Board's decision in *Virginia McRaeJackson et al*, [2004] CIRB 290, 115 CLRBR (2d) 161, [2004] C.I.R.B.D. 31 (QL) at paragraphs 33 and 37 provides a good summary of the applicable principles:

> [33] A union can fulfill its duty to fairly represent an employee by taking a reasonable view of the grievance, considering all of the facts surrounding the grievance, investigating it, weighing the conflicting interest of the union and the employee and then making a thoughtful judgment about whether or not to pursue the grievance. That is called balancing the circumstances of the case against the decision to be made. For example, it is legitimate for the union to consider collective agreement language, industry or workplace practices, or how similar issues have been decided. It is also legitimate for the union to consider the credibility of a grievor, the existence of potential witnesses in support of the grievor's version of the events, whether the discipline is reasonable, as well as the decisions of arbitrators in similar circumstances.
>
> [37] Accordingly, the Board will normally find that the union has fulfilled its duty of fair representation responsibility if: a) it investigated the grievance, obtained

> full details of the case, including the employee's side of the story; b) it put its mind to the merits of the claim; c) it made a reasoned judgment about the outcome of the grievance; and d) it advised the employee of the reasons for its decision not to pursue the grievance or refer it to arbitration.

[31] A union's conduct can also be measured against the nature and consequences of the grievance in issue. Thus, the duty of fair representation will be more onerous in a grievance involving an employee's termination or serious discipline: *Ibid* at paragraph 31; *George Cairns et al v. International Brotherhood of Locomotive Engineers*, 1999 CIRB 35 at paragraph 112.

[32] These principles are well known and have been consistently reiterated in decisions of the Board: *Baribeau v. Canadian Union of Postal Workers et al*, 2004 CIRB 302 at paragraphs 16 to18; *Lamolinaire v. Communications, Energy and Paperworkers Union of Canada*, 2009 CIRB 463 at paragraphs 30 to 37; *Schiller v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)*, 2009 CIRB 435 at paragraphs 33 to 35.

[33] Accordingly, when reviewing a complaint under section 37 of the Code, the Board must, at a minimum, examine the following issues (*Lamolinaire v. Communications, Energy and Paperworkers Union of Canada*, above, at paragraph 36):

(a) Did the union conduct a perfunctory or cursory inquiry, or a thorough one?

(b) Did the union gather sufficient information to arrive at a sound decision?

(c) Were there any personality conflicts or other bad relations that might have affected the soundness of the union's decision?

[34] In this case, however, the Board did not address these issues at all. It was content to find that the applicant had not attended the executive board meeting and Union members' meeting at which his termination grievance was discussed. In so doing, the Board believed that it was dispensed from having to examine any other issues, including, in particular, whether the Union's inquiry into the termination grievance was thorough and whether the Union had gathered sufficient information to make a sound decision with respect to the refusal to take the grievance to arbitration.

[35] Although an employee's participation in the investigative and decision-making process of his or her union is a factor that may be taken into account in the assessment of the union's conduct in the handling of a grievance, the mere fact that the employee did not fully participate in the process cannot, in and of itself, preclude the Board from finding that the union breached its duty of fair and equitable representation, particularly in a termination grievance.

[36] It was in the case of *Jacques Lecavalier v. La Cie Seaforth Fednav Inc.* (1983), 54 di 100 that the former Canada Labour Relations Board first set out the principle of the employee's duty to provide assistance to the union throughout the grievance procedure, such as providing it with all relevant information. However, the mere fact than an employee did not fully participate in the process does not dispense the union from its duty of fair and equitable representation, as each case must be examined on its own merits: *Soufiane v. Fraternité internationale des ouvriers en électricité* (1991), 84 di 187. This principle had been reiterated by the Board, in particular, in *Virginia McRaeJackson et al*, above at paragraphs 15 and 16.

[37] We should not lose sight of the fact that what is at issue in a complaint under section 37 of the Code is the conduct of the union and not that of the complainant. The conduct of the complainant during the union's investigation and assessment can certainly be taken into consideration when determining whether this process was fair and equitable; nonetheless, the onus remains on the union to fulfil its duty of representation.

[38] The Board's approach in this case is all the more peculiar given that in its reconsideration decision it acknowledged that the applicant was not obliged to attend the Union's executive board meeting. In this context, one has difficulty understanding how the Board could conclude that the applicant's absence from this meeting dispensed the Union from its duty of fair and equitable representation. The Board was required to examine the Union's conduct in order to determine whether its investigation of the termination grievance and its decision not to take the grievance to arbitration was fair and equitable. But it failed to do this.

[39] In these circumstances, I can only conclude that both the initial and reconsideration decisions are unreasonable. Indeed, the Board's determination that the applicant's lack of participation in the meetings at issue, in and of itself, precluded the Board from finding that the Union had infringed section 37 of the Code is not a possible, acceptable outcome which is defensible in respect of the facts and law.

Second issue: Did the Board breach its duty of procedural fairness?

(a) Refusal to listen to the recordings

[40] It is truly remarkable to note that, in both its initial and reconsideration decisions, the Board held that the Union had objected to the production of the recordings and transcripts of the meetings, including, in particular, the members' meeting held in Ottawa on June 15, 2011. But this was not the case at all.

[41] In his letter to the Board dated December 2, 2011, the Union's counsel stated, on the contrary, that he did not object to the production of the recordings, and rather encouraged the Board to listen to them. Paragraph 39 of this letter (reproduced at page 121 of the AR) is crystal clear on this point:

> 39. The Board has asked for our position on the recordings taken by the Complainant of various meetings. These recordings were made without the consent of the participants in these meetings and without their knowledge. The Union believes that the conduct of the Complainant in this regard was unethical and improper. However, the Union does not object to the Board reviewing the recordings or the transcripts of these proceedings. In fact, these recordings demonstrate that the Union acted in a highly professional manner and in the best interest of the Complainant.
> [Emphasis added]
>
> [Traduction]
> Le Conseil a demandé notre position sur les enregistrements des diverses rencontres effectués par le plaignant. Ces enregistrements ont été faits sans le consentement des participants à ces réunions et hors de leur connaissance. Le Syndicat croit que la conduite du plaignant à cet égard manquait d'éthique et était inappropriée. Cependant, le Syndicat ne s'objecte pas à ce que le Conseil examine ces enregistrements ou les transcriptions de ces enregistrements. En fait, ces enregistrements démontrent que le Syndicat a agi de façon hautement professionnelle et dans le meilleur intérêt du plaignant.
> [Je souligne]

[42] Questioned on this point by the Court at the hearing, counsel for the Union once again confirmed that he had never objected to the production of these recordings or of their transcripts.

[43] In its initial decision (at paragraph 45), the Board stated that it did not need to dispose of the "objection" raised by the Union on the ground that the applicant's failure to attend the meeting of Union members held on June 15, 2011 allowed it to decide the matter without considering the recordings. However, as the applicant rightly submits, the recording of the meeting sheds considerable light on his participation in the meeting.

[44] Indeed, the transcript of the recording of this meeting (the production of which the Union did not object to) appears to show that the president of the Union and the applicant's brothers contacted him by telephone prior to the start of the meeting on June 15, 2011 and that the applicant's participation in the meeting could have been arranged by speaker-phone, which ultimately did not happen (see, in particular, AR at pages 200 to 203). Whatever the probative force of these recordings, it is clear that they were relevant to the issue the Board considered to be central to its decision, namely, whether the applicant had attended the meeting in question.

[45] In its reconsideration decision (at paragraph 55), the Board attempted to enhance this refusal to consider the recording by citing a process it had established to determine the admissibility of such recordings. This elicits two comments: (a) first, it is not for the Board to enhance an initial decision by means of a redetermination; the Board's initial decision on the issue of the recordings makes absolutely no mention of any sort of policy that would have led to the refusal to consider these among the evidence adduced; (b) second, the Board's policy on the admissibility of recordings made without the knowledge of those being recorded, specifically set out in *D.H.L. International Express Ltd.* (1995), 99 di 126; 28 CLRBR (2d) 297 (CCRT No 1147), applies where one of the

parties involved objects to their admissibility. As we have noted, in this case the Union clearly did not object to the production of the recordings and transcripts.

(b) Refusal to hold an oral hearing

[46] Section 16.1 of the Code provides that the Board may dispose of any issue that is before it without holding an oral hearing. Nevertheless, it should not be inferred from this that Parliament thus authorized the Board to dispense with an oral hearing if this would result in a breach of procedural fairness: *Global Television v. Communications, Energy and Paperworkers Union of Canada*, 2004 FCA 78, 318 N.R. 275 at paragraph 23.

[47] The principles governing the application of section 16.1 of the Code have been set out by our Court on numerous occasions, and are summarized as follows in *Grain Services Union (ILWU-Canada) v. Freisen*, above, at paragraphs 23 to 25:

> [23] The discretion of the Board under section 16.1 of the *Code* is very wide, but it is not absolute. Our Court has determined that this section does not authorize a breach of the duty of procedural fairness by permitting the Board to dispense with an oral hearing in circumstances where this would deny a party a reasonable opportunity to participate in the decision-making process: *Communication, Energy and Paperworkers Union of Canada v. Global Television (Global Lethbridge, a Division of CanWest Global Communications Corp.)*, 2004 FCA 78, 318 N.R. 275 at para. 23; *Amalgamated Transit Union, Local 1624 v. Syndicat des travailleuses et travailleurs de Coach Canada*, 2010 FCA 154, 403 N.R. 341 at para. 18.
>
> [24] Our Court has also found, in the context of a complaint of unfair representation under section 37 of the *Code*, that the mere fact that evidence is contradictory does not automatically warrant an oral hearing before the Board absent other compelling reasons. Indeed, since many credibility issues will almost unavoidably arise in a labour relations context, section 16.1 of the *Code* would potentially be deprived of effect if it were otherwise interpreted and applied: *Nadeau v. United Steelworkers of America*, 2009 FCA 100, 400 N.R. 246 at para. 6; *Guan v. Purolator Courier Ltd.*, 2010 FCA 103 at para. 28; see also in a different legislative context *Vancouver Wharves Ltd. v. International Longshoremen's and*

> *Warehousemen's Union, Ship and Dock Foremen, Local 514 (F.C.A.)* (1985), 60 N.R. 118.
>
> [25] I am of the view that the same principle applies in this case concerning a revocation of certification under section 38 of the *Code*. In order to successfully challenge the decision of the Board not to hold an oral hearing in such circumstances, it must be demonstrated not only that contradictory evidence was before the Board, but that the resolution of this contradictory evidence was essential to the outcome of the decision and that no other evidence could reasonably support the decision of the Board.
>
> [Emphasis added.]

[48] In this case, it is acknowledged that the Board had contradictory evidence before it regarding the applicant's attendance at the Union members' meeting. In addition, in its initial decision, the Board itself indicated that the applicant's absence from the members' meeting held in Ottawa on June 15, 2011, was the pivotal factor for its decision. Although the Board tasked an officer with gathering evidence in this regard, the testimony taken was not sworn, witnesses were not cross-examined, and none of the other evidence (aside from the recordings that the Board had not heard) was able to resolve the contradictory versions on this point.

[49] Given these circumstances, and following the Board's own reasoning in its decision (which indicated that the applicant's attendance at the meeting in question was the determinative issue in the matter), the Board should have held an oral hearing in the interest of procedural fairness.

[50] I am therefore of the view that in the particular circumstances of this case, the Board breached procedural fairness by refusing to consider the recordings of the meeting held on June 15, 2011 submitted by the applicant and by refusing to hold an oral hearing to resolve the contradictory versions with regard to the applicant's participation in the meeting.

Conclusions

[51] I would therefore allow the two applications for judicial review with one set of costs for both applications, set aside the Board's initial decision and reconsideration decision, and refer the matter back to the Board for reconsideration of the complaint submitted by the applicant in light of the reasons of this Court by a panel consisting of members who did not participate in either of these decisions.

"Robert M. Mainville"

J.A.

"I agree.
Johanne Gauthier J.A."

"I agree.
Johanne Trudel J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-447-12
A-118-13

APPEAL FROM A JUDGMENT OF THE CANADIAN INDUSTRIAL RELATIONS BOARD DATED SEPTEMBER 21, 2012, FILE NO 28982-C (2012 CIRB 656).

STYLE OF CAUSE:	BRIAN CADIEUX v. AMALGAMATED TRANSPORT UNION, LOCAL 1415 AND GREYHOUND CANADA TRANSPORTATION CORP.
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JANUARY 16, 2014
REASONS FOR JUDGMENT:	MAINVILLE J.A.
CONCURRED IN BY:	GAUTHIER J.A. TRUDEL J.A.
DATED:	MARCH 10, 2014

APPEARANCES:

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