

Federal Court



Cour fédérale

Date: 20160906

Docket: T-969-16

Citation: 2016 FC 1008

[ENGLISH TRANSLATION]

Montréal, Quebec, September 6, 2016

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

**SOCIÉTÉ DE TRANSPORT DE
L'OUTAOUAIS**

Applicant

and

**SYNDICAT UNI DU TRANSPORT
(LOCAL 591)**

Respondent

ORDER AND REASONS

I. Nature of the motion

[1] The aim of this motion written under rule 369 of the *Federal Courts Rules*, SOR/98-106 [Rules], is to order, in accordance with rules 423 and 431, the enforcement of an arbitral award issued on May 5, 2016, by Renaud Paquet. More specifically, it seeks to order the respondent to

take measures, particularly to disclose the necessary documents and information, so that the employer may accomplish the tasks assigned to it by Appendix “H” of the collective agreement between the parties.

II. Overview

[2] The applicant, Société de transport de l’Outaouais (STO), is a corporation providing an urban public transportation system to the residents of the cities of Gatineau, Cantley and Chelsea.

[3] The respondent, the Syndicat uni du transport, local 591 (Syndicat), is an accredited association of employees as defined in the *Canada Labour Code*, RSC 1985, c. L-2, representing the applicant's urban drivers and maintenance employees.

[4] A collective agreement was entered into by the parties. This collective agreement contains Appendix “H,” which sets out the tasks assigned to the STO for administering employees' long-term disability coverage. The Appendix sets out the following tasks:

1. Advise the insurance company of any change affecting the union members who are covered or their salaries for the purposes of long-term disability insurance.
2. If required, provide the necessary information and forms in a timely manner to the disabled union members so they may begin to receive, within the time limit set by the plan, the employment insurance benefits beginning at the start of the time provided for in the plan, if applicable.

3. Provide the insurance company and union members with all of the necessary information and claims for benefits so that the payment of long-term disability benefits can begin within the appropriate timeframe set out in the plan.
4. Follow up on claim files, if necessary.
5. Bill the Syndicat on a monthly basis for group insurance premiums (other than those for long-term disability), union dues and contributions to a pension fund otherwise paid by union members when they receive employment insurance benefits.

[5] On March 5, 2015, the STO filed a grievance alleging that the Syndicat violated the agreement and that, more specifically, the Syndicat failed to carry out its obligations following a change in insurance company, by acting as though Appendix “H” was null and void. Furthermore, the Syndicat allegedly acted to prevent the STO from doing a medical follow-up by failing to forward the information relevant to the disability files to the STO.

[6] On May 5, 2016, Renaud Paquet issued an arbitral award with the following decision:

[TRANSLATION]

HOLDS that Appendix “H” of the collective agreement remains in effect even though the insurance company changed as of January 1, 2015;

ORDERS the Syndicat to take the measures to ensure that the employer may, by May 20, 2016, at the latest, fully perform the tasks assigned to it by Appendix “H” of the collective agreement.

[7] To ensure compliance with this order, the applicant requested, through a letter dated May 16, 2016, the documents that it deemed necessary to perform the tasks assigned to it by Appendix “H.” In particular, the documents deemed relevant by the applicant are as follows:

1. Copy of the insurance contract;
2. Contact information and role of the claims adjudicators assigned to the files, their supervisors and the account manager;
3. All of the documents relating to the claims and billing;
4. Copy of the claims forms;
5. Details relating to the claims procedures and deadlines.

[8] The respondent did not forward any documents and stated, on May 20, 2016, that it intended to contest the arbitral award by way of judicial review. The applicant repeated its request for these documents on May 20, 2016.

[9] On June 3, 2016, the respondent filed an application for judicial review of the arbitral award. However, the arbitral award was not stayed.

[10] The applicant asked Mr. Paquet, in a letter dated June 6, 2016, to supplement his decision by listing the documents required to comply with Appendix "H." Following that request, the arbitrator Renaud Paquet issued a new decision on August 31, 2016, in which he concluded that he is *functus officio* and therefore does not have the jurisdiction to list the documents to which the applicant is entitled. The new decision also noted that the litigation before him did not concern the identification of the specific documents that must be provided.

[11] On June 21, 2016, the Federal Court issued a certificate of a filing for the arbitral award pursuant to section 66 of the *Canada Labour Code*. On June 29, 2016, the applicant served this filing and reiterated its request for the documents and information listed to the respondent. To date, no document or information has been sent to the applicant.

III. Relevant Act

[12] Section 66 of the *Canada Labour Code* sets forth how a party may give effect to an arbitrator's order:

*Filing of orders and decisions
in Federal Court*

66 (1) Any person or organization affected by any order or decision of an arbitrator or arbitration board may, after fourteen days from the date on which the order or decision is made or given, or from the date provided in it for compliance, whichever is the later date, file in the Federal Court a copy of the order or decision, exclusive of the reasons therefor.

(2) On filing an order or decision of an arbitrator or arbitration board in the Federal Court under subsection (1), the order or decision shall be registered in the Court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the order or decision were a judgment obtained in the Court.

Exécution des décisions

66 (1) La personne ou l'organisation touchée par l'ordonnance ou la décision de l'arbitre ou du conseil d'arbitrage peut, après un délai de quatorze jours suivant la date de l'ordonnance ou de la décision ou après la date d'exécution qui y est fixée, si celle-ci est postérieure, déposer à la Cour fédérale une copie du dispositif de l'ordonnance ou de la décision.

(2) L'ordonnance ou la décision d'un arbitre ou d'un conseil d'arbitrage déposée aux termes du paragraphe (1) est enregistrée à la Cour fédérale; l'enregistrement lui confère la valeur des autres jugements de ce tribunal et ouvre droit aux mêmes procédures ultérieures que ceux-ci.

[13] The motion for enforcement is filed pursuant to part 12 and to sections 423 and 431 of the *Rules*:

Where brought

423 All matters relating to the

Compétence exclusive

423 Toute question concernant

enforcement of orders shall be brought before the Federal Court.

Performance by other person

431 Where a person does not comply with an order to perform an act, without prejudice to the powers of the Court to punish the person for contempt, on motion, the Court may order that

(a) the required act be performed by the person by whom the order was obtained or by another person appointed by the Court; and

(b) the non-complying person pay the costs incurred in the performance of the act, ascertained in such a manner as the Court may direct, and that a writ of execution be issued against the non-complying person for those costs.

l'exécution forcée d'une ordonnance relève de la Cour fédérale.

Accomplissement de l'acte par une autre personne

431 Si une personne ne se conforme pas à l'ordonnance exigeant l'accomplissement d'un acte, la Cour peut, sur requête, sans préjudice de son pouvoir de la punir pour outrage au tribunal, ordonner :

a) que l'acte requis soit accompli par la personne qui a obtenu l'ordonnance ou par toute autre personne nommée par la Cour;

b) que le contrevenant assume les frais de l'accomplissement de l'acte, déterminés de la manière ordonnée par la Cour, et qu'un bref d'exécution soit délivré contre lui pour le montant de ces frais et les dépens.

IV. Issues in Dispute

[14] The applicant submits the following issues in dispute:

1. Is this Honourable Court justified in ordering the respondent to comply with the order from Mr. Paquet issued on May 5, 2016?
2. Can this Honourable Court allow the applicant, in order to perform the tasks assigned to it by Appendix "H," to take possession of the aforementioned documents, in the possession of the respondent, considering the latter's repeated refusals?

V. Preliminary Issue

[15] At the end of its written submissions, the respondent requested that, despite this motion being submitted in writing, the Court convene the parties to a hearing in order to render a decision on the motion. This request from the respondent was not supported by any argument.

[16] I am in agreement with the applicant that, in the absence of an indication of how a hearing would help this Court render a decision, it is preferable that I render my decision solely on the basis of the motion records submitted by the parties.

VI. Analysis

[17] The applicant has reason to claim that the arbitral award has become enforceable through its filing in Federal Court and that, in the absence of a stay of execution, it therefore follows that the respondent must comply with this order. The respondent has taken no measures following the arbitral award to comply with the order, and it is trying in vain to oppose its enforcement.

[18] First, regarding the respondent's assertion that neither the applicant nor its employees suffered an alleged detriment, I note that (i) the arbitrator ordered the respondent to take the measures so that the applicant can fully perform the tasks assigned to it by Appendix "H" of the collective agreement, and (ii) the respondent did nothing in turn. In my opinion, it is not necessary to assess the detriment in order to justify the enforcement of an order.

[19] Second, the respondent's argument stating that the applicant is requesting enforcement stemming from an insurance contract that no longer exists must be dismissed. The respondent is again trying an argument that was dismissed by the arbitrator. This issue was central to the arbitral award and, after recognizing that there was a new insurance contract, the arbitrator stated that Appendix "H" remained in effect.

[20] Third, the respondent wrongly claims that the order stemming from the arbitral award is [TRANSLATION] "purely declaratory." It is clear that, on the one hand, the arbitrator [TRANSLATION] "declared" that Appendix "H" of the collective agreement was still in effect and, on the other hand, that the arbitrator [TRANSLATION] "ordered" the Syndicat to take the measures so that the employer could perform the tasks assigned to it. I see no reason not to conclude that this second part of the arbitral award is enforceable.

[21] The respondent claims that the order in the arbitral award is not sufficiently specific for it to know how to comply with it. The respondent cites *Telus Mobility v. Telecommunications Workers Union*, 2002 FCT 1268, at paragraphs 38 and following to claim that an order must contain specific directions so that a party may make a reasonable attempt to comply with it. We must keep in mind that these comments are part of a contempt proceeding and not for enforcement. That being said, we should keep in mind that the respondent must be able to know how to comply with an order that is under enforcement in order to avoid contempt proceedings.

[22] In this case, the respondent is unable to establish that the order is ambiguous. The order refers the respondent to Appendix "H," which has existed between the parties for 30 years

(through several renewals of the collective agreement) with no indication of difficulty of interpretation. I see no indication that the respondent argued before the arbitrator that Appendix "H" was ambiguous. Moreover, I see no evidence that the respondent is having difficulty interpreting its obligations arising from the order.

[23] It follows from the conclusions in the preceding paragraph that it is neither necessary nor appropriate to extend the scope of the order by adding a reference to the documents listed by the applicant. Those documents are simply the applicant's interpretation of what the order requires, and I will not take a position on this issue. It suffices to restate that I am not convinced that the order, in referencing the specific text of Appendix "H," is ambiguous.

ORDER

THE COURT ORDERS that this motion for enforcement of the arbitral award issued on May 5, 2016, by Renaud Paquet be allowed with costs and that the respondent immediately take the measures so that the employer can fully perform the tasks assigned to it by Appendix “H” of the collective agreement.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-969-16

STYLE OF CAUSE: SOCIÉTÉ DE TRANSPORT DE L'OUTAOUAIS v
SYNDICAT UNI DU TRANSPORT (LOCAL 591)

ORDER AND REASONS: LOCKE J.

DATED: SEPTEMBER 6, 2016

WRITTEN MOTION CONSIDERED IN OTTAWA, ONTARIO, UNDER RULE 369.

WRITTEN REPRESENTATIONS BY:

Isabelle Carpentier-Cayen
Judith Séguin

FOR THE APPLICANT

Maryse Lepage

FOR THE RESPONDENT

SOLICITORS OF RECORD:

RPGL
Barristers & Solicitors
Gatineau, Quebec

FOR THE APPLICANT

Bastien, Moreau, Lepage
Barristers & Solicitors
Gatineau, Quebec

FOR THE RESPONDENT