Federal Court of Appeal | Cour d'appel fédérale

Date: 20240411

Docket: A-165-23

Citation: 2024 FCA 68

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

BETWEEN:

VICTOR WALCOTT

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Heard at Toronto, Ontario, on April 11, 2024.

Judgment delivered from the Bench at Toronto, Ontario, on April 11, 2024.

REASONS FOR JUDGMENT OF THE COURT BY: BIRINGER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on April 11, 2024).

BIRINGER J.A.

[1] The applicant, Victor Walcott, seeks judicial review of a decision of the Federal Public Sector Labour Relations and Employment Board (Board): 2023 FPSLREB 54. The Board summarily dismissed the applicant's complaint that his former union, the Public Service Alliance of Canada, had failed in its duty of fair representation, under section 187 of the *Federal Public*

Sector Labour Relations Act, S.C. 2003, c. 22, s. 2, in relation to his 1997 termination grievance. The applicant argues that the Board's process was unfair and that its decision was unreasonable.

[2] The applicant brought a motion to admit as new evidence two letters dated 1993, relating to the applicant's termination grievance. The respondent opposed the motion. Generally, evidence on a judicial review application is limited to what was before the decision-maker, as the reviewing Court's role is to consider the decision-maker's decision, and not decide the issue afresh: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para. 19 [*Access Copyright*].

[3] We will dismiss the motion. The letters were not before the Board and do not fall into any of the recognized exceptions for admitting evidence not before the decision-maker: *Access Copyright* at para. 20. We add that if admitted, they would not have affected the outcome of this application.

[4] We reject the applicant's submissions on procedural unfairness. The allegations of bias and conflict of interest are not supported by the evidence. We also see no unfairness in the Board deciding the matter without an oral hearing. The Board is expressly authorized to do so by section 22 of the *Federal Public Sector Labour Relations and Employment Board Act*, S.C. 2013, c. 40, s. 365 (FPSLREBA). Further, the Board had no duty to investigate; it relies solely on the evidence submitted by the parties.

[5] Returning to the merits of the judicial review, the standard of review for the Board's substantive decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 16 [*Vavilov*]; *Andrews v. Public Service Alliance of Canada*, 2022 FCA 159 at para. 25.

[6] We do not accept that the Board's decision was unreasonable. Under section 21 of the FPSLREBA, the Board may "dismiss summarily any matter that in its opinion is trivial, frivolous, vexatious or was made in bad faith." It was entirely reasonable for the Board to conclude that the applicant had no arguable case. Fundamentally, the complaint was an attempt to relitigate issues decided more than twenty years ago.

[7] As noted by the Board, the applicant's termination grievance was dismissed in 1997, and a judicial review application was struck by the Federal Court as having no reasonable prospect of success: [1997] C.P.S.S.R.B. No. 107 and 1998 CanLII 7355 (FC), respectively. This Court upheld the Federal Court's decision: 2000 CanLII 15103 (FCA), 180 F.T.R. 149.

[8] In 2000, the applicant made a fair representation complaint that was substantially similar to the one at issue here, based on dissatisfaction with his counsel's handling of the 1997 termination grievance. The Board dismissed the complaint, brought three years after the relevant events, for delay: 2001 PSSRB 86. The applicant's judicial review application was dismissed: 2003 FCA 113.

[9] Given these circumstances, and the lack of new evidence or argument, the Board reasonably concluded that the applicant was "attempting to revive a matter that was settled long ago" and that there was no arguable case, even assuming the applicant's allegations to be true: Board Reasons at paras. 5, 26-27, and 29.

[10] In our view, the applicant has not identified any reviewable error in the Board's decision. The Board's reasons for summarily dismissing the complaint bear the hallmarks of reasonableness—justification, transparency, and intelligibility—and are justified in relation to the factual and legal constraints, including the interest in the finality of decisions: *Vavilov* at para. 99.

[11] For the foregoing reasons, we will dismiss the application and the motion, without costs.

"Monica Biringer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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