

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260224

Docket: A-287-24

Citation: 2026 FCA 39

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

BETWEEN:

BJARNI HENRIKSON

Applicant

and

WESTJET, AN ALBERTA PARTNERSHIP

Respondent

Heard at Calgary, Alberta, on February 24, 2026.
Judgment delivered from the Bench at Calgary, Alberta, on February 24, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

MONAGHAN J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Calgary, Alberta, on February 24, 2026).

MONAGHAN J.A.

[1] Between August and October 30, 2021, the federal government announced and introduced several measures relating to COVID-19 vaccinations for employees in federally regulated air, rail and marine transportation sectors. The measures mandated employers in those sectors to establish vaccination policies and that certain of their employees be fully vaccinated. Relevant here, employees in the airline sector were required to be fully vaccinated before

attending an aerodrome property: *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 43*, (2021) C Gaz I, 5314.

[2] In response, and in discharge of its duties to take every reasonable precaution to protect its employees under the *Canada Labour Code*, R.S.C. 1985, c. L-2, the respondent, WestJet, an Alberta Partnership (WestJet), established a COVID-19 vaccination policy that required employees to be vaccinated before October 30, 2021. WestJet employed the applicant, Bjarni Henrikson, as an aircraft maintenance engineer and notified him that he, like other WestJet employees, would be required to comply with the policy. The applicant did not comply, and on December 1, 2021, WestJet terminated his employment. This led the applicant to file an unjust dismissal complaint with the Canada Industrial Relations Board (Board).

[3] The Board found WestJet's vaccination policy was reasonable, clear and unequivocal and was applied fairly to the applicant. The Board then found that WestJet had just cause to discipline the applicant for failure to comply with a reasonable policy and that termination was not an excessive response. Accordingly, the Board determined WestJet had established just cause and dismissed the applicant's complaint: *Henrikson v. WestJet, an Alberta Partnership*, 2024 CIRB 1157.

[4] The applicant seeks judicial review contending the decision is unreasonable and the process before the Board was procedurally unfair, giving rise to a reasonable apprehension of bias. The applicant also argues that the Board erred in concluding that the federal government order mandating vaccinations for employees in the air, rail and marine transportation sectors was

not unconstitutional and did not breach section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 1. The Board relied on a Quebec Superior Court decision which came to those findings: *Syndicat des métallos, section locale 2008 c. Procureur général du Canada*, 2022 QCCS 2455.

[5] Addressing this last argument first, we see no reviewable error in the Board's reliance on that case or in the Board's finding the federal government order was not unconstitutional. Moreover, the Board found whether that order was constitutional or not, WestJet's vaccination policy was reasonable for the health and safety of its employees.

[6] Sitting in judicial review, we may set aside the Board decision if it is unreasonable: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Petruska v. International Association of Machinists and Aerospace Workers*, 2025 FCA 203 at para. 6 and cases there cited.

[7] Matters of procedural fairness, including bias, are reviewed on a standard akin to correctness: *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para. 54; *Girouard v. Canada (Attorney General)*, 2020 FCA 129 at para. 38. We must be satisfied the process followed was fair and just having regard to all the circumstances: *Adegoke v. Canada (Attorney General)*, 2025 FCA 229 at para. 9; *Masjoody v. Canada (Attorney General)*, 2025 FCA 200 at para. 8; *Canadian Pacific* at para. 54.

[8] The applicant bears the burden of demonstrating the decision is unreasonable by persuading us it has “sufficiently serious shortcomings...that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency”: *Vavilov* at para. 100.

[9] The applicant also challenges the Board’s findings of fact as unsupported by the evidence and claims the Board’s findings on WestJet’s vaccination policy and justification for terminating him are unreasonable. All of these arguments ask us to do what we must not. We cannot reweigh or reassess the evidence the Board considered, interfere with its factual findings, and come to our own conclusion: *Vavilov* at paras. 83, 125.

[10] A reasonable decision is one “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at para. 85. Applying that standard, we conclude the Board’s decision is reasonable. The Board appropriately relied on the analytical framework established in *Re Lumber & Sawmill Workers’ Union, Local 2537, and KVP Co. Ltd.*, (1965), 16 L.A.C. 73, 1965 CanLII 1009 (ON LA) to determine whether there is just cause in terminating an employee for breach of a company policy and reasonably concluded that WestJet had just cause in the circumstances. Also, we are not persuaded that the Board erred in concluding that further notice or lesser sanctions were not necessary in these circumstances.

[11] Turning to procedural fairness, the applicant complains the Board precluded him from testifying about certain matters—specifically, “with regard to the possibility to rearrange [his] tasks, roles, and duties to let [him] perform from home for a temporary period”: Applicant’s

Affidavit at para. 21 A). He submits that evidence was relevant and necessary to determining whether termination was an excessive response or there were appropriate alternative measures. He complains that the Board, not WestJet, raised concerns about the testimony, giving rise to a reasonable apprehension of bias, or a breach of procedural fairness.

[12] Allegations of bias should not be made lightly. The applicant bears the burden and the threshold to establish bias is a high one: *ABB Inc. v. Hyundai Heavy Industries Co., Ltd.*, 2015 FCA 157 at para. 55, citing *R. v. S. (R.D.)*, [1997] 3 SCR 484 at paras. 113-114. The question is “whether an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that ...[the] allegations give rise to a reasonable apprehension of bias”: *Amos v. Canada*, 2017 FCA 213 at para. 17; see also *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 at para. 20.

[13] While there is no transcript of the Board hearing, WestJet does not dispute that the Board precluded the applicant from presenting evidence about his ability to work from home. However, because WestJet bore the burden of establishing the dismissal was not an unjust one, its witness testified first. WestJet says the Board precluded the applicant’s testimony because the applicant’s counsel did not ask WestJet’s witness about the matter, violating the rule in *Browne v. Dunn*, (1893), 6 R. 67 (H.L.), 1893 CanLII 65 (FOREP). The applicant does not deny these facts but asserts that the Board should have permitted him to present the evidence and WestJet to recall its witness.

[14] Based on the record before us, we find no merit to the applicant's allegations of an apprehension of bias or breach of procedural fairness.

[15] First, the Board is master of its own procedure and is entitled to make rulings about the admissibility of evidence: *Maritime Employers Association v. Syndicat des débardeurs (Canadian Union of Public Employees, Local 375)*, 2023 FCA 93 at para. 86. Indeed, it is expressly empowered to receive and accept such evidence as it, in its discretion, sees fit: *Canada Labour Code*, s. 16(c).

[16] Second, it is worth noting that nowhere in the record before the Board is there any suggestion that the applicant's duties did not require him to work at an aerodrome. Both his complaint and the agreed statement of facts describe his position as an aircraft maintenance engineer. WestJet's reply to his complaint expressly states that, as such, he "was expected to attend at aerodrome properties to conduct aircraft maintenance and repair services as part of his regular job duties". In his response, the applicant neither challenged that statement nor alleged that he had duties that did not require him to attend the aerodrome. The applicant's supplementary submissions similarly were silent on the matter. Thus, it appears WestJet had no notice the applicant intended to assert that his job did not require him to attend the aerodrome, or that his tasks, roles and duties could be rearranged, and led no evidence relevant to that matter. WestJet's rights to procedural fairness include its right to know the case it had to meet: *Canadian Pacific* at para. 41.

[17] Finally, notwithstanding that the Board precluded the applicant from testifying to the matter, its reasons indicate it accepted submissions on the matter and that the applicant performed some administrative duties. However, it found them secondary to his “core responsibilities” being “hands-on maintenance of aircraft in hangar bays located at the airport”: Board decision at paras. 12, 36, 43, 56, 71-73, 76.

[18] We see no unfairness. Simply put, the applicant falls far short of meeting the threshold to establish a reasonable apprehension of bias or a breach of procedural fairness.

[19] Accordingly, we will dismiss the application for judicial review.

"K.A. Siobhan Monaghan"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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PARTNERSHIP

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DELIVERED FROM THE BENCH BY: MONAGHAN J.A.

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