

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260225

Docket: A-268-25

Citation: 2026 FCA 42

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

BETWEEN:

**CANADIAN PACIFIC RAILWAY COMPANY o/a
CANADIAN PACIFIC KANSAS CITY RAILWAY**

Applicant

and

WILLIAM KATZ

Respondent

Heard at Calgary, Alberta, on February 25, 2026.

Judgment delivered from the Bench at Calgary, Alberta, on February 25, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

WEBB J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Calgary, Alberta, on February 25, 2026).

WEBB J.A.

[1] Canadian Pacific Railway Company o/a Canadian Pacific Kansas City Railway (CPKC) is seeking judicial review of a decision of the Canada Industrial Relations Board (CIRB) dated July 3, 2025 (2025 CIRB LD 5708). The CIRB found that Mr. Katz was an employee of CPKC (and not a manager) and that he was “unjustly dismissed by [CPKC] by way of a constructive

dismissal”. The unjust dismissal provisions of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the *Code*) (Division XIV) would not be applicable if Mr. Katz was a manager (subsection 167(3) of the *Code*).

[2] As a result of certain changes to the terms and conditions of his employment, Mr. Katz filed a complaint under subsection 240(1) of the *Code* alleging that he had been unjustly dismissed. The complaint was referred to the CIRB. In its letter dated February 14, 2024, the CIRB stated:

The Board is not obliged to hold an oral hearing, and it may proceed to make a decision on this complaint based only on the documents on file after the above deadlines have passed. It is important that the parties provide complete, accurate and detailed information and include all relevant documents.

[3] Mr. Katz provided particulars of his complaint on March 18, 2024, CPKC submitted its response on April 12, 2024 and Mr. Katz replied by letters dated May 29, 2024 and May 31, 2024.

[4] In this application for judicial review, CPKC alleges that the CIRB violated CPKC’s procedural fairness rights by not having an oral hearing and by “depriving CPKC of a meaningful opportunity to respond to new arguments introduced late in the proceedings” (paragraph 49 of CPKC’s memorandum). The “new arguments” were those raised by Mr. Katz in his reply in relation to whether he was a manager.

[5] Section 16.1 of the *Code* gives the CIRB the discretion to decide any matter without holding an oral hearing:

16.1 The Board may decide any matter before it without holding an oral hearing.

16.1 Le Conseil peut trancher toute affaire ou question dont il est saisi sans tenir d'audience.

[6] Furthermore, in this matter, CPKC specifically requested that the matter be decided without a hearing. In its response, dated April 12, 2024, to Mr. Katz's particulars of his complaint, in which CPKC submitted that Mr. Katz was a manager, CPKC stated:

35. CPKC therefore submits that the complaint must be summarily dismissed in accordance with s.167(3) of the *Code* without a hearing as Mr. Katz does not dispute nor does the evidence indicate that he was not a "manager" for the purposes of s.167(3). As such, Mr. Katz's recourse is more properly through the courts and not under the *Code*.

[Emphasis added.]

[7] There is nothing in the record to indicate that CPKC informed the CIRB that it was resiling from this position that the complaint be resolved without a hearing. Having submitted that the CIRB should dismiss Mr. Katz's complaint without a hearing, there is no merit to CPKC's argument that the CIRB violated CPKC's procedural rights by deciding the matter without having an oral hearing.

[8] Mr. Katz, in his reply (by letters dated May 29 and 31, 2024) disputed the allegation that he was a manager. With respect to CPKC's argument that it did not have an opportunity to respond to Mr. Katz's reply submissions that he was not a manager, there is nothing in the record

to indicate that CPKC asked the CIRB for any right to file additional submissions or documents after Mr. Katz submitted his reply.

[9] As well, the only additional arguments that CPKC alleges it would have made, relate to Mr. Katz's role with CPKC. As his employer, CPKC would have known what his role and responsibilities were prior to Mr. Katz filing his reply and should have addressed these in its response to Mr. Katz's complaint. Having raised the issue of whether Mr. Katz was a manager, CPKC had the onus to prove that he was a manager. In its letter dated April 12, 2024, CPKC provided few details concerning Mr. Katz's role and responsibilities and CPKC did not refer to any caselaw.

[10] As noted by this Court in *Maritime Broadcasting System Ltd. v. Canadian Media Guild*, 2014 FCA 59:

[67] I note that Maritime Broadcasting's procedural fairness submissions in this Court run counter to a well-established line of jurisprudence and, thus, must be rejected. An applicant must raise an alleged procedural violation at the earliest practical opportunity: *Benitez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 461 at paragraph 220, aff'd 2007 FCA 199; *In Re Human Rights Tribunal and Atomic Energy of Canada*, 1985 CanLII 5528 (FCA), [1986] 1 F.C. 103 (C.A.) at page 113. The earliest practical opportunity is where "the applicant is aware of the relevant information and it is reasonable to expect him or her to raise an objection.": *Benitez, supra* at paragraph 220; see also D. J. M. Brown and J.M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf) (Toronto: Canvasback, 1998) at paragraph 3:6000. A party "cannot wait until it has lost before crying foul": *Geza v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 124 at paragraph 66.

[11] Mr. Katz filed his reply submissions on May 29, 2024 and May 31, 2024. The CIRB, by letter dated June 4, 2024 advised the parties that:

Please be advised that the submission process is now complete. **No further submissions are requested.**

[Emphasis in original.]

[12] The letter does not prohibit the parties from submitting a request to provide further submissions. It only indicates that the CIRB was not requesting any further submissions. The decision of the CIRB was rendered on July 3, 2025, over a year later. There was plenty of time for CPKC to raise any concerns that it had in relation to Mr. Katz's reply and to request an opportunity to provide additional submissions before the decision was rendered. Having failed to raise any of its allegations of procedural unfairness before the CIRB concerning Mr. Katz's reply and any additional arguments he was making in that reply, CPKC cannot succeed in this application for judicial review on the issue of a breach of procedural fairness. There was no breach of procedural fairness by the CIRB in not granting CPKC the opportunity to make additional submissions that CPKC did not request.

[13] In brief submissions, CPKC also argued that the decision of the CIRB that Mr. Katz was an employee and not a manager was unreasonable. CPKC, however, has not established any basis on which this Court should interfere with the decision of the CIRB that Mr. Katz was an employee who was not a manager.

[14] As a result, the application for judicial review of the decision of the CIRB will be dismissed. The Court will reserve its right to award costs.

“Wyman W. Webb”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-268-25

STYLE OF CAUSE: CANADIAN PACIFIC RAILWAY
COMPANY o/a CANADIAN
PACIFIC KANSAS CITY
RAILWAY v. WILLIAM KATZ

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: FEBRUARY 25, 2026

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

DELIVERED FROM THE BENCH BY: WEBB J.A.

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