Federal Court

Cour fédérale

Date: 20170922

Docket: T-1313-17

Citation: 2017 FC 852

Ottawa, Ontario, September 22, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

SENATE OF CANADA

Applicant

and

DARSHAN SINGH

Respondent

ORDER AND REASONS

[1] Mr. Darshan Singh [respondent or grievor] is a former employee of the Senate of Canada [applicant or Senate] whose employment relationship was governed by provisions of the *Parliamentary Employment and Staff Relations Act*, RSC 1985, c 33 (2nd Supp) [PESRA]. The Senate terminated the respondent's employment on December 2, 2015, and the respondent filed a grievance pursuant to the provisions of PESRA challenging the termination of his employment.

[2] This is a motion made by the applicant to stay an interlocutory order of an adjudicator of the Federal Public Sector Labour Relations and Employment Board [Board] compelling the applicant to produce and make certain documents available to the grievor's representative, pending the outcome of the present judicial review application challenging the legality or reasonableness of this interlocutory order.

[3] The grievance has not yet been decided on the merits, and the adjudicator has not yet ruled on the admissibility of the documents in question. In his decision, he cautions: "While the Senate is compelled to produce the aforementioned documents, this shall not be interpreted as meaning that the Senate may not continue to ascertain Parliamentary privilege over parts or all of the aforementioned documents and/or to maintain that such documents or portions thereof may not be relied upon in the proceeding. The Senate may at any time raise any objection as to the admissibility of any documentary evidence, including the aforementioned documents, sought to be entered by the grievor during the proceeding."

[4] Apparently, the impugned documents were prepared for *in camera* Senate proceedings, and include minutes, records of attendance and other documents of *in camera* meetings of the Senate's Standing Committee on Internal Economy, Budgets and Administration and its subcommittees. I have no difficulty in finding today that the issues raised by the applicant in the underlying judicial review application are serious. No reasons are provided by the adjudicator for making the interlocutory order. The applicant's counsel has also made a strong claim before this Court that the adjudicator's order to produce documents gathered in or prepared for *in camera* Senate proceedings effectively disregards the Senate's prerogative to hold meetings *in camera*

and invoke Parliamentary privilege over documents prepared for these meetings (see especially *Canada (House of Commons) v Vaid*, 2005 SCC 30, [2005] 1 SCR 667 [*Vaid*]; *Lavigne v Ontario (Attorney General)*, 91 OR (3d) 728, [2008] OJ No 2951; *R v Duffy*, 2015 ONCJ 694, [2015] OJ No 6481; *Routcliffe v Senate of Canada*, 2009 CRTFP 5, 182 LAC (4th) 245).

[5] This brings me to address the issues of irreparable harm and balance of convenience in the context of prematurity of the present motion for stay. The fundamental obstacle for making a stay order today resides in the fact that, at present time, the interlocutory ruling is not enforceable *per se*.

[6] I am ready to accept that if the applicant provides the grievor's counsel the impugned documents in the discovery process, the harm will already have been done, whether or not they are subsequently produced or excluded at the hearing by the adjudicator who has not yet ruled on their admissibility in evidence. The problem though is that the alleged irreparable harm is speculative at this stage. In effect, the applicant – who is in possession of and has total control over the production of the privileged documents – has no intention whatsoever to comply in the near future with the interlocutory order of the adjudicator. Moreover, contrary to orders made by the Board which may be filed with the Federal Court for enforcement purposes under the authority of section 234 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, any subsequent Board order in this case directing the applicant to comply with the adjudicator's interlocutory ruling can only be filed to Parliament.

[7] Labour relations in the Senate are governed by the provisions of the PESRA which provides a special mechanism in the case the Senate – an employer for the purpose of these provisions – fails to give effect to a decision of an adjudicator. This includes the interlocutory order made in this case. First, the complainant – the grievor in this case – must make a complaint to the Board (paragraph 13(1)(c) of the PESRA). Second, the Board must determine that there has been a failure to give effect to the decision of the adjudicator, and as the case may be, order the employer to comply with the adjudicator's decision within a specified delay (subsection 13(2) of the PESRA). Third, where any such order has not been complied with within the specified time, the Board shall cause a copy of its order, a report of the circumstances and all documents relevant thereto, to be laid before each House of Parliament within fifteen days after the expiration of the period, or, if that House is not then sitting, on any of the first fifteen days next thereafter on which that House is sitting (section 14 of the PESRA).

[8] The above mechanisms have not yet been exhausted by the respondent who has made or is on the verge of making a complaint to the Board. Pursuant to sections 13 and 14 of the PESRA, Parliament retains control over the enforcement of an adjudicator's order, and ultimately employment matters. This is entirely consistent with the Senate's privilege and Parliament's intent in enacting the PESRA provisions (see *Vaid* at paras 84 to 87, 95 and 96; *Canada (House of Commons) v Vaid*, 2002 FCA 473 at paras 102 to 110, [2003] 1 FC 602, not infirmed on this particular point). Today, the question as to whether or not the Senate will comply with any order made by the Board is entirely speculative. The Senate may well reaffirm its claim that the impugned documents are privileged – making it a valid reason for not complying with the adjudicator's interlocutory order, and as the case may be, any future order of

the Board, until the matter of privilege is finally decided by this Court. Moreover, the balance of convenience is in favour of the respondent. If the impugned order is stayed by the Court, this will have the effect of circumventing the unique statutory procedure established by Parliament under the PESRA.

[9] For these reasons, the motion for stay made by the applicant is dismissed. Costs in the amount of $1000 are reasonable in the circumstances. I do not see any special reason to make them payable forthwith and in any event of the cause, as asked by respondent's counsel.

ORDER in T-1313-17

THIS COURT ORDERS that the motion for stay made by the applicant be dismissed with costs in the amount of $1000 in favour of the respondent.

"Luc Martineau"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1313-17
STYLE OF CAUSE:	SENATE OF CANADA v DARSHAN SINGH
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APPEARANCES:

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