

Federal Court



Cour fédérale

Date: 20071206

Docket: T-1036-07

Citation: 2007 FC 1282

[ENGLISH TRANSLATION]

Montréal, Quebec, December 6, 2007

PRESENT: Richard Morneau, Esq., Prothonotary

BETWEEN:

NADINE KASSAB

Applicant

and

BELL CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Whereas these Reasons for Order and Order are concerned with awarding the objection by the tribunal in question, Nathalie Faucher, regarding the transmission of her handwritten notes that she took during a hearing that was held on February 27, 2007, while she was acting as adjudicator under Division XIV of the *Canada Labour Code* (R.S.C. (1985) c. L-2) and at the end of that

proceeding, she made her decision on May 2, 2007, in which she dismissed a complaint of unjust dismissal filed by the applicant.

[2] Given the order issued by this Court on October 30, 2007, as well as the various records filed by the parties, in accordance with the three steps set out at page 3 of that order dated October 30, 2007.

[3] Whereas the Court is of the opinion that, as an adjudicator appointed under section 242 of the *Canada Labour Code*, Ms. Faucher constituted an administrative tribunal performing a judicial role, and that she therefore benefits here from the judicial privilege that is adjudicative privilege, and that this privilege absolutely applies here.

[4] Given paragraphs 15 to 18 of the solemn affirmation sworn by Ms. Faucher on June 28, 2007; the paragraphs read as follows:

[TRANSLATION]

15. I use my handwritten notes as a memory aid when I deliberate and draft my decision.
16. For me, these notes are an essential and integral part of the process whereby I come to a decision in cases that are submitted to me.
17. During the hearing on February 27, 2007, which was held to hear the complaint by Nadine Kassab against her employer, Bell Canada, I took handwritten notes as usual, and in the manner described above. As is always the case, the handwritten notes also served as a memory aid during my deliberation and while drafting my arbitration award dated May 2, 2007, and they are

part of the decision-making process that led me to make this award.

18. I am signing this affidavit as a grievance adjudicator and tribunal in support of my objection to the request by the applicant, Nadine Kassab, to transmit a certified copy of my personal, handwritten notes, and for no other purpose.

[5] Given the teachings to be drawn from *Canada (Privacy Commissioner) v. Canada (Labour Relations Board)*, [1996] 3 F.C. 609 (hereinafter *CLRB*) and their application by Ms. Faucher as part of her objection and reply records.

[6] Given more specifically paragraphs 68, 69, 75 to 77 of *CCRT*.

[7] Whereas the handwritten notes sought here by the applicant are clearly and unquestionably at the core of the adjudicator in question's decision-making privilege.

ORDER

For the reasons above, the objection by Ms. Faucher regarding the transmission of handwritten notes sought by the applicant is upheld, and the Court therefore dismisses the application by the applicant to transmit said notes.

As for the future timetable that the parties are to observe in bringing this docket to order, the parties shall, within the next fifteen (15) days, jointly transmit a clear and concise draft order that set out the steps to follow and the resulting deadlines.

“Richard Morneau”

Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1036-07

STYLE OF CAUSE: NADINE KASSAB
Applicant
and
BELL CANADA
Respondent

**REASONS FOR ORDER
AND ORDER:** PROTHONOTARY MORNEAU

DATED: December 6, 2007

SOLICITORS OF RECORD:

Pierre-Alexandre Cyr
7547 St-Denis Street
Montréal, Quebec H2R 2E7

FOR THE APPLICANT

Suzanne Thibaudeau, QC
Heenan Blaikie LLP
1250 René-Lévesque Blvd. West
Suite 2500
Montréal, Québec H3B 4Y1

FOR THE TRIBUNAL