

Federal Court



Cour fédérale

Date: 20121025

Docket: T-1572-12

Citation: 2012 FC 1246

Ottawa, Ontario, this 25th day of October 2012

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

MOHAMMED TIBILLA

Plaintiff

And

UNION OF TAXATION EMPLOYEES-PSAC

Defendant

UPON motion in writing on behalf of the defendant for an Order, pursuant to paragraph 221(1)(a) of the *Federal Courts Rules*, that the plaintiff's Statement of Claim be struck without leave to amend on the basis that it discloses no reasonable cause of action;

REASONS FOR ORDER AND ORDER

[1] The plaintiff's Statement of Claim is struck out in its entirety, without leave to amend, on the basis that it discloses no reasonable cause of action (paragraph 221(1)(a) of the *Federal Courts Rules*, 1998, SOR/98-106).

[2] The plaintiff, in his action, seeks redress from the defendant, a component of the certified bargaining agent the Public Service Alliance of Canada (“PSAC”), for allegedly mishandling a grievance concerning an unsatisfactory performance appraisal by his employer, the Canada Revenue Agency. The plaintiff seeks general damages of \$800,000.00, punitive damages of \$700,000.00, an Order requiring the defendant to refer the matter to an independent adjudicator, and the costs of this action.

[3] The Supreme Court of Canada in *Gendron v. Supply & Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 S.C.R. 1298 [*Gendron*] ruled, at paragraphs 42 and 50, that courts have no jurisdiction to hear claims based on a bargaining agent’s alleged breach of its duty of fair representation. As pointed out by the defendant, that case dealt with the *Canada Labour Code*, R.S.C. 1985, c. L-2, which expressly provides that a bargaining agent “shall not act in a manner that is arbitrary, discriminatory or in bad faith” in representing any employees (section 37). The Court held that, in codifying this duty in the overall labour relations scheme, Parliament intended to confer exclusive jurisdiction on a specialized labour board to remedy a breach of the duty. As the Court explained at paragraph 50 of its decision:

... Parliament has provided the duty, the procedure for adjudicating an alleged breach, a wide array of remedies and a privative clause protecting the Board. It can be therefore assumed to have intended that the ordinary courts would have but a small role if any to play in the determination of disputes covered by the statute. An analysis of the legislative scheme would not seem to permit any alternative as any other interpretation would endanger the special role of the Labour Board and the policy underlying the Code. ...

[4] The Supreme Court ultimately concluded that, where a bargaining agent is subject to a statutory duty of fair representation, a member of the bargaining unit alleging a breach of the duty has to proceed to the decision-making structure provided under the legislation for redress. According to the Court, “there is no original jurisdiction in the ordinary courts to decide the matter, only the ability to review Board decisions in the very limited parameters contemplated by the privative clause” (see *Gendron*, above, at paragraphs 60 and 61).

[5] Like the *Canada Labour Code*, the *Public Service Labour Relations Act*, S.C. 2003, c. 22 (the “*PSLRA*”) confers exclusive jurisdiction to the Public Service Labour Relations Board. By the combination of sections 185, 187, 190 and 192 of the *PSLRA*, Parliament clearly intended for the Board to have exclusive jurisdiction to determine whether a bargaining agent has committed an unfair labour practice, including a breach of its duty of fair representation. As the Supreme Court of Canada found in *Gendron*, *supra*, the statutory duty ousts the common law in situations where the statute applies. Accordingly, I agree with the defendant that if the plaintiff has concerns with the quality of the representation he received from the bargaining agent in relation to a grievance over the terms of his employment with the Canada Revenue Agency, his redress lies with the Board, not this Court.

[6] Ultimately, depending on the circumstances, judicial review of the Board’s decision made pursuant to subsection 192(1) of the *PSLRA* could be successfully sought before this Court.

ORDER

Consequently, the plaintiff's Statement of Claim is struck out in its entirety, without leave to amend. Costs are awarded against the plaintiff.

“Yvon Pinard”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1572-12

STYLE OF CAUSE: MOHAMMED TIBILLA v. UNION OF TAXATION
EMPLOYEES-PSAC

MOTION DEALT WITH IN WRITING PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

**REASONS FOR ORDER
AND ORDER:** Pinard J.

DATED: October 25, 2012

SUBMISSIONS FILED BY:

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