Federal Court  Cour fédérale

Date: 20131018

Docket: T-1318-13

Citation: 2013 FC 1047

Ottawa, Ontario, October 18, 2013

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

GEORGE EDWARD BOULOS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is in response to a motion submitted by the respondent and moving party, the Attorney General of Canada, for an order dismissing the application for judicial review by the applicant and responding party, George Edward Boulos, of an interlocutory decision rendered by the Public Service Labour Relations Board [the Board], on the grounds that the proceeding is premature.

[2] For the reasons discussed below, I will grant the moving party's motion and dismiss the application.

Background

[3] Mr. Boulos was employed as an income/excise tax auditor at the Canada Revenue Agency [the CRA]. In April 2010, he referred six grievances to adjudication before the Board under paragraph 209(1)(b) of the *Public Service Labour Relations Act*, SC 2003, c. 22 [the Act]. They were originally scheduled to be heard from May 31 to June 3, 2011.

[4] On June 2, 2010, the CRA raised objections to the jurisdiction of the Board to hear the grievances on the basis that they were not related to a disciplinary action resulting in termination, demotion, suspension or financial penalty.

[5] On March 17, 2011, Mr. Boulos requested that the assigned adjudicator order the CRA to provide him with the residential and mailing addresses of ten individuals employed or formally employed by it. The CRA objected to having to disclose the residential and mailing addresses of its current and former employees due to privacy concerns.

[6] On May 25 or 26, 2011, a few days prior to the hearing, the issue of the disclosure of the personal addresses of current and past employees was discussed during a pre-hearing conference call. The CRA accepted to facilitate service of summonses (if issued by the Board) to its current employees by serving them at the workplace. At that stage, there were only two individuals no longer at the employ of the CRA, out of the ten sought by Mr. Boulos for the issuance of summonses.

[7] The affidavit of Matthew Yaworski, a Labour Relations advisor for the CRA, claims that the adjudicator, Michèle A. Pineau then denied Mr. Boulos' request for an order to disclose employees and ex-employees' personal addresses on the basis that the information sought was personal information pursuant to the *Privacy Act*, RSC, 1985, c P-21. Mr. Boulos, however, denies that a conclusion on the subject was reached at that time.

[8] Either way, the hearing scheduled for May 31 to June 3, 2011 was postponed, since it was too late at that point to issue and serve summonses.

[9] On May 27, 2011, counsel for the CRA confirmed by email to Mr. Boulos that the CRA would facilitate to the best of its abilities the service of summonses to employees of the CRA, if such summonses were eventually to be issued by the Board.

[10] Shortly after the pre-hearing conference call, Mr. Boulos sent a request in writing to the Board for the adjudicator Pineau to recuse herself from the file. However, on August 2, 2011, Ms. Pineau decided that the issue had become moot as her mandate as an adjudicator would end in December, 2011, and her schedule was fully booked until then.

[11] The grievances were therefore assigned to Mr. Renaud Pacquet [the Adjudicator].

[12] On September 19, 2011, the Adjudicator determined that the CRA's objections to the jurisdiction of the Board to hear the grievances would be dealt with by way of written submissions, with the exception of one of the grievances.

[13] On October 27, 2011, Mr. Boulos filed an application for judicial review before the Federal Court of Appeal to challenge the Adjudicator's decision to deal with some of his grievances in writing. On November 17, 2011, the Federal Court of Appeal ordered the transfer of file to this Court.

[14] In January 2012, the moving party filed a motion to dismiss the application for judicial review, on the basis that it was premature and untimely.

[15] On March 6, 2012, Prothonotary Roger Lafrenière agreed with the moving party and dismissed the application for judicial review (*Boulos v Attorney General of Canada*, 2012 FC 292 [*Boulos*]). In doing so, he held, at para 23, that:

> Being substantially in agreement with the written representations filed on behalf of the respondent, which I adopt and make mine, I conclude that the decision being impugned in the Notice of Application is interlocutory, as opposed to jurisdictional, in nature, and that no special circumstances have been established that would warrant the Court's intervention at this stage. The applicant should simply wait for the Adjudicator to rule on the matters before him or her and then decide whether there are any grounds for judicial review.

[16] On April 25, 2013, Madam Justice Snider dismissed Mr. Boulos' motion for an extension of time to appeal the order.

[17] On October 4, 2012, following the completion of the written submissions process before the Board, the Adjudicator determined that he did not have sufficient information to rule on the

objections filed by the CRA and decided that a hearing would be called to hear evidence and arguments on the merit of all six grievances and the objections.

[18] On October 15, 2012, Mr. Boulos filed for bankruptcy and the Attorney General filed a proof of claim with the Trustee, in an attempt to recover the amount of $1,250 due to the Receiver General for Canada (following the above mentioned orders of the Federal Court).

[19] On March 19, 2013, the Board scheduled the hearing for April 29 to May 3, 2013.

[20] On April 3, 2013, Mr. Boulos once again raised the issue of the disclosure of the personnel addresses of his witnesses and the Adjudicator directed that a pre-hearing teleconference be held to discuss this matter along with other procedural issues.

[21] On April 18, 2013, the CRA determined that five out of the ten persons identified as potential witnesses by Mr. Boulos were still employed by the CRA and reiterated to Mr. Boulos that it agreed to provide assistance for the service of summonses to these five employees. The CRA was also ready to assist Mr. Boulos in serving one of its former employees with who it was still in contact.

[22] On April 19, 2013, during the pre-hearing conference call, the Adjudicator decided that the issue regarding the disclosure of ex-employees' addresses (the remaining four witnesses from Mr. Boulos' list) would be dealt with by way of written submissions. The Adjudicator also decided once again that the hearing would be postponed.

[23] On June 25, 2013, the Adjudicator decided that he would not order the CRA to disclose the requested information. The Adjudicator reiterated the confidentiality of the information sought, and he noted that each party had the onus of reaching and finding its own witnesses. However, the Adjudicator also noted that Mr. Boulos had raised valid concerns regarding the difficulty for him to reach the witnesses in question and he proposed the following alternative:

> I propose that the employer make the arrangements to serve the summons to these four witnesses at the addresses that it has on file, and that the grievor pays the employer for the costs associated with serving the summonses.

[24] The hearing is now scheduled to be held on February 25-28, 2014.

[25] The CRA has not objected to the Adjudicator's proposal. However, the Adjudicator's proposal has not yet been implemented, as the CRA has yet to receive any summonses from Mr. Boulos. Instead, Mr. Boulos has applied for judicial review of that interlocutory decision before this Court.

Analysis

[26] This is Mr. Boulos' second application for judicial review of an interlocutory decision in relation to his grievances before the Board. Once more, the application does not raise a pure question of jurisdiction, nor exceptional circumstances to warrant the Court's intervention at this time. Before applying for judicial review, Mr. Boulos must exhaust all of the rights and remedies available under the administrative process. He has failed to do so.

[27] As Prothonotary Lafrenière has already explained to Mr. Boulos at para 17 of *Boulos*, "courts have consistently declined jurisdiction and dismissed applications to judicially review tribunal decisions where the process before the tribunal has not been exhausted."

[28] As the Federal Court of Appeal notes in *Greater Moncton International Airport Authority v Public Service Alliance of Canada*, 2008 FCA 68 at para 1, the basic concern in limiting a party's access to the Court to challenge an interlocutory decision "is that such litigation may become unnecessary in light of the Board's ultimate decision in this matter."

[29] The Federal Court of Appeal, in *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61, reiterates this, in saying:

> [31] Administrative law judgments and textbooks describe this rule in many ways: the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation of administrative proceedings, the rule against interlocutory judicial reviews and the objection against premature judicial reviews. All of these express the same concept: absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. This means that, absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they proceed to court. Put another way, absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted.

[30] Moreover, as the Supreme Court of Canada states in *Halifax (Regional Municipality) v Nova Scotia (Human Rights Tribunal)*, 2012 SCC 10 at para 35:

> early judicial intervention risks depriving the reviewing court of a full record bearing on the issue; allows for judicial imposition of a "correctness" standard with respect to legal questions that, had they been decided by the tribunal, might be entitled to deference; encourages an inefficient multiplicity of proceedings in tribunals and courts; and may compromise carefully crafted, comprehensive legislative regimes.

[31] Mr. Boulos contends that the Adjudicator's failure to exercise his jurisdiction under paragraph 226(1)(e) of the Act provides grounds for his application for judicial review. This argument is without merit. Assuming Mr. Boulos in fact meant paragraph 226(1)(a) of the Act, the Adjudicator is not required to compel witnesses, but *may* do so – this decision is of his own prerogative. If he does however, section 18 of the *Public Service Labour Relations Board Regulations*, SOR 2005/79 provides that he may "require that an application for a summons contain the name and address of the witness to be summoned…" Accordingly, there is no issue of jurisdiction before the Court. Mr. Boulos' application for judicial review is in fact dealing with an interlocutory decision, one that is of a procedural nature.

[32] Mr. Boulos alternatively contends that the Adjudicator's refusal to order the disclosure of the personal addresses of the individuals in question will prevent him from calling them as witnesses, and, accordingly, will be fatal to the outcome of the adjudication process. As such, despite the lack of jurisdiction, these exceptional circumstances should justify the Court's intervention.

[33] Mr. Boulos cites *Canada (Attorney General) v Quadrini*, 2011 FCA 115 [*Quadrini*], as an instance where the Federal Court of Appeal granted an application for judicial review of an

interlocutory order by the Board. In *Quadrini*, the Board had ordered the CRA to provide an affidavit sworn by its solicitor describing the nature of the contents of pages that had been redacted from an exhibit on the ground that they were subject to solicitor-client privilege. The Federal Court of Appeal allowed the application for judicial review, noting at para 29 that:

> It is widely acknowledged that the protection of the confidentiality of legal advice communicated by lawyers to their clients is of fundamental importance to the administration of justice. […] Disclosure is permitted only when it is an "absolute necessity… as restrictive a test as can be formulated short of an absolute prohibition in every case": *Goodis v Ontario (Correctional Services)*, 2006 SCC 31 at para 20.

[34] The Federal Court of Appeal thus held that solicitor-client privilege was considered to fall under the category of exceptional circumstances for the Court to allow an application for judicial review of an interlocutory decision, as the law only allows for the breach of solicitor-client privilege in very rare and specific instances. As such, the information in question in *Quadrani* was to remain confidential.

[35] Mr. Boulos' circumstances do not measure up to the exceptional circumstance of solicitor-client privilege in *Quadrani*. Ultimately, it is Mr. Boulos' responsibility to reach and find his own witnesses; ordering the CRA to divulge the addresses of current and former CRA employees would in fact facilitate Mr. Boulos' efforts. However, there are other ways for Mr. Boulos to find the witnesses in order to serve summonses. The Adjudicator has in fact suggested one such way.

[36] I also note that, on a broader level, similarly to the Federal Court of Appeal in *Quadrani*, the Adjudicator has not allowed Mr. Boulos access to the information he seeks because the law, in our

case the *Privacy Act*, forbids its disclosure. One should read *Quadrani* to mean that the unlawful disclosure of confidential information is the exceptional circumstance required for the Court to allow for an application for judicial review of an interlocutory decision. Applications for judicial review therefore should not be allowed for the inverse situation.

[37] At its essence, Mr. Boulos' position in respect of his claims of exceptional circumstances is based on mere speculation. Considering the legitimate privacy considerations at issue in providing Mr. Boulos with the requested information, the Adjudicator proposed a reasonable compromise that should not prove to be fatal to the outcome of the adjudication process.

[38] Moreover, the CRA has shown itself willing to serve the summonses to the witnesses still at its employ, as well as to serve at their last known addresses those witnesses who no longer work at the CRA. There are no grounds to believe Mr. Boulos' allegations that, owing to the "bad faith" of the CRA, it may deliberately choose to frustrate the aforementioned process. Accordingly, there is no reason to suggest that the Adjudicator's decision will have a detrimental impact on the outcome of the grievances.

[39] As to Mr. Boulos' argument that the proposed arrangement would require him to pay for the services of a process server, I am sensitive to Mr. Boulos' precarious financial situation and the additional costs he would bear as a result. However, the moving party is not required to bear the costs attached to service of summonses because of Mr. Boulos' impecuniosity. In any event, should a solution not be reached in this respect, Mr. Boulos can, should he so choose, raise this issue in a judicial review of the *final* decision of the Adjudicator on the merit of his case.

[40] In fact, the same reasoning extends to any procedural unfairness suffered by Mr. Boulos from any other future interlocutory decision or order made by the Adjudicator. Mr. Boulos must wait for the Adjudicator to rule on his grievances. Ultimately, the Adjudicator may very well find in his favour, rendering the issue before this Court, or any other future interlocutory decision or order, moot. If not, Mr. Boulos can then decide whether there are any grounds for judicial review.

Conclusion

[41] For these reasons, I will grant the motion to dismiss and I will dismiss the application for judicial review. I will award costs to the moving party in the amount of $750.00.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The motion to dismiss is granted;
2. The application for judicial review of the Public Service Labour Relations Board's interlocutory decision, rendered on June 25, 2013, is dismissed;
3. Costs of the motion, hereby fixed in the amount of $750.00, inclusive of disbursement and taxes, shall be paid by the applicant to the respondent and moving party.

"Jocelyne Gagné"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1318-13
STYLE OF CAUSE:	GEORGE EDWARD BOULOS AND ATTORNEY GENERAL OF CANADA Motion dealt with in writing
REASONS FOR JUDGMENT AND JUDGMENT:	GAGNÉ J.
DATED:	October 18, 2013

APPEARANCES:

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Me Anne-Marie Duquette	FOR THE RESPONDENT

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