

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20141210**

**Dockets: A-263-13  
A-384-13**

**Citation: 2014 FCA 295**

**CORAM: NADON J.A.  
TRUDEL J.A.  
BOIVIN J.A.**

**BETWEEN:**

**CANADIAN UNION OF POSTAL WORKERS**

**Applicant**

**and**

**CANADA POST CORPORATION,  
PHARMAPRIX INC. / SHOPPERS DRUG  
MART INC., LES SERVICES DE SANTÉ  
CLAUDE GERVAIS INC., GESTIONS LUCAP  
INC., AND OTHER RESPONDENTS**

**Respondents**

Heard at Montréal, Quebec, on December 9 and 10, 2014.

Judgment delivered from the Bench at Montréal, Quebec, on December 10, 2014.

**REASONS FOR JUDGMENT OF THE  
COURT BY:**

**TRUDEL J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Montréal, Quebec, on December 10, 2014.)

**TRUDEL J.A.**

[1] Before the Court are two applications for judicial review filed by the Canadian Union of Postal Workers (the applicant) against two decisions of the Canada Industrial Relations Board

(the Board) dated July 3, 2013, and October 22, 2013. The two applications were consolidated by order of this Court dated January 7, 2014.

[2] In the first decision, the Board ruled that it did not have constitutional jurisdiction to rule on the applicant's certification applications to represent employees working in various postal outlets in pharmacies based in a given area (*Canada Post Corporation*, 2013 CIRB 690). In the second, it held that the true employer of the employees concerned by the certification applications are the pharmacist owners of the drug stores in which the postal outlets in question are located. It dismissed the applicant's applications for a stay of proceedings and found it unnecessary to review the alternative applications for a single employer declaration (*Canada Post Corporation*, 2013 CIRB 697).

[3] The applicant union invites us to apply the principles of business dissociation, predictability and consistency to conclude that the Board erred in its analysis of the constitutional issue and, more specifically, in its assessment of the essential operational nature of the undertaking.

[4] The applicant argues that the main work, undertaking or business here is the Canada Post Corporation. But at paragraph 56 of its reasons, it appears that the Board, on the basis of the evidence heard, concluded that it was "the drug stores that are the going concerns at issue" and that it therefore had to consider the essential operational nature of the drug stores to adjudicate the dispute. In our opinion, this is a question of mixed fact and law, and we were not satisfied that the Board made an overriding error calling for our intervention. The evidence before the

Board revealed the integration of postal services and the other services offered by the various drug stores concerned by the dispute. On the basis of this evidence, the Board's conclusion is far from unreasonable. Nor was it unreasonable for the Board not to adopt the reasoning of past panels of the Board in similar situations. Each of these cases had its own facts that can be distinguished.

[5] In this regard, we note the applicant's argument that the Board misread *Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail)*, 2012 SCC 23, [2012] 2 S.C.R. 3 [Tessier], a case concerning divided constitutional jurisdiction, even though it submits that we are dealing here with direct jurisdiction. According to the applicant, paragraph 48 of *Tessier*, which the Board quotes, does not apply in the context of an integrated, indivisible undertaking.

[6] The Board was not wrong in referring to *Tessier* for the general principles that may be inferred from it, especially as the Board was of the opinion that the situation before it raised the issue of derivative jurisdiction, a subject addressed by the Supreme Court in *Tessier*. Moreover, it is our opinion that there is no distinction to be made, as the applicant is inviting us to do, between that case and the principles applying to the matter at bar.

[7] We also note the applicant's submissions on this Court's decision in *Turnaround Couriers Inc. v. Canada Post Corporation*, 2012 FCA 36, [2013] 4 F.C.R. 252. According to the applicant, that decision is relevant because of the employer's identity and the Board's alleged error in this regard (see paragraph 117 of its memorandum of fact and law). Since we have

already determined that the Board did not err in deciding that the employer was not the Canada Post Corporation, there is no need to discuss this any further.

[8] The applicant relies heavily on *Sheldon Manly Drugs Ltd. (Re)*, 1 C.L.R.B.R. (2d) 218, 71 di 103, *Canada Post Corporation and Rideau Pharmacy Ltd.*, 1 C.L.R.B.R. (2d) 239, 77 di 85, and *Canada Post Corporation and Nieman's Pharmacy*, 4 C.L.R.B.R. (2d) 161, 77 di 181, to support its argument that the postal outlets can be separated from the drug stores. Those cases, however, concerned the transfer or sale of a business, and, given the recent observations of the Supreme Court in *Tessier* and in *Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters*, 2009 SCC 53, [2009] 3 S.C.R. 407, it is our opinion that the cases referred to by the applicant do not apply in this instance.

[9] In addition, the applicant is attempting to show that several pieces of evidence suggested that postal outlets and drugstores were [TRANSLATION] “dissociated” businesses and that the postal outlets are a postal service within the meaning of subsection 91(5) of the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.) (see paragraphs 88 *et seq.* of the applicant’s memorandum of fact and law). Those facts were all before the Board, which gave them the weight it deemed appropriate. Among other things, the Board had before it an agreement entitled Master Dealership Agreement, which provides unequivocally that the postal outlet must be integrated into an existing host business, in this case the drug stores. That was its role, and the mandate of this Court is not to reweigh the evidence adduced at first instance. Indeed, the applicant is not challenging the Board’s findings of fact and law, and several pieces of evidence accepted by the Board were not contradicted. Unless we are satisfied that the Board ignored evidence that was

relevant to the dispute, evidence that could have changed the outcome of the proceeding, had it been considered, once again, this Court will not interfere with the Board's findings of fact or of mixed fact and law.

[10] We have not been convinced. The various definitions found in the *Canada Post Corporation Act* are not incompatible with the Board's decision and, consequently, do not make it unreasonable.

[11] Lastly, the applicant argues that the Board did not treat it with the procedural fairness to which it was entitled. There is no merit to these arguments regarding the October 22, 2013, decision.

[12] Consequently, the applications for judicial review will be dismissed with a single set of costs. It goes without saying that the respondents are entitled to their disbursements for each docket.

“Johanne Trudel”

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J.A.

Certified true translation  
François Brunet, Revisor

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKETS:** A-263-13 AND A-384-13

**STYLE OF CAUSE:** CANADIAN UNION OF POSTAL WORKERS v. CANADA POST CORPORATION, PHARMAPRIX INC. / SHOPPERS DRUG MART INC., LES SERVICES DE SANTÉ CLAUDE GERVAIS INC., GESTIONS LUCAP INC., AND OTHER RESPONDENTS

**PLACE OF HEARING:** MONTRÉAL, QUEBEC,

**DATE OF HEARING:** DECEMBER 9 AND 10, 2014

**REASONS FOR JUDGMENT OF THE COURT BY:** NADON J.A.  
TRUDEL J.A.  
BOIVIN J.A.

**DELIVERED FROM THE BENCH BY:** TRUDEL J.A.

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