

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20160113**

**Docket: A-149-15**

**Citation: 2016 FCA 8**

**CORAM: RYER J.A.  
NEAR J.A.  
RENNIE J.A.**

**BETWEEN:**

**PUBLIC SERVICE ALLIANCE OF CANADA, ROBYN BENSON, LORI HALL,  
MARLENE ETTTEL, VALERIE GRUNDY AND DES SCOTT**

**Applicants**

**and**

**CANADA REVENUE AGENCY AND MARCIA BUFFORD**

**Respondents**

Heard at Ottawa, Ontario, on January 13, 2016.  
Judgment delivered from the Bench at Ottawa, Ontario, on January 13, 2016.

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

**NEAR J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160113

Docket: A-149-15

Citation: 2016 FCA 8

CORAM: RYER J.A.  
NEAR J.A.  
RENNIE J.A.

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA, ROBYN BENSON, LORI HALL,  
MARLENE ETTTEL, VALERIE GRUNDY AND DES SCOTT

Applicants

and

CANADA REVENUE AGENCY AND MARCIA BUFFORD

Respondents

**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Ottawa, Ontario, on January 13, 2016).

**NEAR J.A.**

[1] This is an application for judicial review of a decision of the Public Service Labour Relations and Employment Board (the Board), dated February 20, 2015 and cited as 2015 PSLREB 20, denying two consent orders sought by Ms. Marcia Bufford, the Public Service Alliance of Canada (PSAC), and Lori Hall, Robyn Benson, Marlene Ettel, Valerie Grundy, and

Des Scott (the Named Individuals), pursuant to subsection 192(1) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22 (the Act). These orders related to two unfair labour practice complaints that Ms. Bufford had filed against the Named Individuals and PSAC.

[2] Ms. Bufford's complaint was that PSAC and the Named Individuals committed an unfair labour practice by failing to provide her with fair representation with respect to two grievances against her employer, the Canada Revenue Agency (the CRA). The events that gave rise to these grievances occurred between January 2004 and October 2009, at least six years ago and at most twelve years ago.

[3] Proceedings before the Board with regard to Ms. Bufford's complaints commenced on January 28, 2013. They were adjourned after five days, and scheduled to resume in May 2013. Settlement negotiations between Ms. Bufford and PSAC ensued, and an agreement was reached. However, the proceedings before the Board remain outstanding.

[4] This settlement led to the applications to the Board for the consent orders at issue. In essence, those orders provided that:

- a) PSAC acknowledged its unfair labour practice;
- b) the complaint against the Named Individuals was dropped;
- c) Ms. Bufford would be permitted to proceed with the grievances against the CRA, notwithstanding that they had not yet been filed; and
- d) the grievances were deemed to have met all applicable time limits.

[5] In effect, the consent orders would grant Ms. Bufford an extension of time to file her grievances without having to resort to the specific provisions of the Act and the *Public Service Labour Relations Regulations*, S.O.R./2005-79 (the Regulations) and meet the requirements thereunder.

[6] The Board declined to grant the orders for the following reasons:

- a) it had not determined that the complaints were well founded, which is a precondition to issuing a remedy under subsection 192(1) of the Act;
- b) the orders were against the CRA's interests and the Board's power under subsection 192(1) of the Act only extends to issuing orders against a party complained of (here, PSAC and the Named Individuals); and
- c) it could not rely upon its power to make "incidental" orders under section 36 of the Act to grant the extension of time and refer the grievances to adjudication because the power to extend timelines is codified in section 61 of the Regulations.

[7] As a preliminary matter, on consent, the style of cause will be amended to replace "Canada Revenue Agency" as the respondent with "The Attorney General of Canada" (*Gravel v. Canada (AG)*, 2011 FC 832 at para. 6, 393 F.T.R. 219).

[8] The standard of review of the Board's decision is reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paras. 47, 62, [2008] 1 S.C.R. 190; *Exeter v. Canada (Attorney General)*, 2014 FCA 251 at para. 29, 465 N.R. 346.

[9] The applicant contends that the Board decision under review is inconsistent with the prior Board decision in *Ménard v. Public Service Alliance of Canada*, 2010 PSLRB 124. In that case, the Board rescinded the improper withdrawal of a grievance by the union and reactivated the then-closed grievance. Importantly, there was in that case a prior decision by the Board that the complaint was well-founded. Thus, the statutory pre-condition to the exercise of the remedial process in subsection 192(1) of the Act had been met. Here, no such determination has been made.

[10] The applicants also argue that the proposed consent orders would merely “impact incidentally on CRA” (Applicants’ Memorandum of Fact and Law at para. 39, Application Record, Vol. 2 Tab 4). The Board held that the relief in the proposed consent orders was, in this case, as against the CRA, given the significant time delays that the CRA was being asked to ignore. Indeed, the Board concluded that the relief sought in the proposed consent order was “substantive relief as against the employer in relation to grievances that Ms. Bufford alleged” and that “[t]his relief as set out in the applications for consent orders is specifically as against the employer” (Board Reasons at para. 85).

[11] We agree that the proposed consent orders would directly, and not incidentally, impact the CRA and that the Board reasonably concluded that the effect of the proposed consent orders would be as against the CRA, which is not a party complained of, for the purposes of subsection 192(1) of the Act.

[12] Despite counsel's various and forceful arguments, we are not persuaded that the decision of the Board was unreasonable. The decision is amply supported by the reasons that are referred to above and we see no reason to interfere with it.

[13] For these reasons, the application will be dismissed with costs.

"David G. Near"

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**THIS IS AN APPLICATION FOR JUDICIAL REVIEW IN RESPECT OF THE  
DECISION OF A PANEL OF THE PUBLIC SERVICE LABOUR RELATIONS AND  
EMPLOYMENT BOARD DATED FEBRUARY 15, 2015,  
CITATION NO: 2015 PSLREB 20.**

**DOCKET:** A-149-15

**STYLE OF CAUSE:** PUBLIC SERVICE ALLIANCE OF  
CANADA, ROBYN BENSON,  
LORI HALL, MARLENE ETTTEL,  
VALERIE GRUNDY AND DES  
SCOTT v.  
CANADA REVENUE AGENCY  
AND MARCIA BUFFORD

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** JANUARY 13, 2016

**REASONS FOR JUDGMENT OF THE COURT BY:** RYER J.A.  
NEAR J.A.  
RENNIE J.A.

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

**APPEARANCES:**

Andrew Raven  
Dayna Steinfeld  
FOR THE APPLICANTS

Richard Fader  
FOR THE RESPONDENT  
CANADA REVENUE AGENCY

**SOLICITORS OF RECORD:**

Raven, Cameron, Ballatyne & Yazbeck LLP/s.r.l.  
Ottawa, Ontario  
FOR THE APPLICANTS

William F. Pentney  
Deputy Attorney General of Canada  
FOR THE RESPONDENTS