

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160615

Docket: A-354-15

Citation: 2016 FCA 184

**CORAM: STRATAS J.A.
NEAR J.A.
GLEASON J.A.**

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on June 15, 2016.

Judgment delivered from the Bench at Ottawa, Ontario, on June 15, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

GLEASON J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160615

Docket: A-354-15

Citation: 2016 FCA 184

**CORAM: STRATAS J.A.
NEAR J.A.
GLEASON J.A.**

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on June 15, 2016).

GLEASON J.A.

[1] The applicant seeks to set aside the July 15, 2015 decision of the Public Service Labour Relations and Employment Board rendered by Adjudicator Olsen and reported as 2015 PSLREB 62. In the decision, the adjudicator dismissed the applicant union's grievance.

[2] The grievance alleged that the employer's interpretation of the holiday pay provisions for employees who work variable hours violated the collective agreement and, in particular, was contrary to article 25.11 and paragraph 25.13(d) of the collective agreement. Under the employer's interpretation, employees who worked ten hours on a designated paid holiday were paid premium pay for all hours worked but were only credited with 7.5 hours for purposes of averaging their regular hours of work under the variable shift schedule. In the decision, the adjudicator upheld this interpretation.

[3] The parties concur that the reasonableness standard of review applies to the adjudicator's decision. We agree as it is firmly settled that decisions made by labour adjudicators involving the interpretation of a collective agreement are entitled to significant deference: *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405, *Canada (A.G.) v. Delios*, 2015 FCA 117 at paras 18-21, 472 N.R. 171.

[4] The hallmarks of a reasonable decision are that it is transparent, justified and intelligible and that the result reached falls within the range of possible, acceptable outcomes defensible in light of the facts and applicable law: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47.

[5] We see nothing unreasonable in the adjudicator's decision in the present case. Both the reasons given and the result reached are reasonable.

[6] The adjudicator's reasons are entirely adequate as they fully set out why he dismissed the grievance and thoroughly canvass the evidence, the parties' arguments and the applicable case law. The decision is therefore transparent and intelligible.

[7] Similarly, we believe the result reached by the adjudicator is justifiable and defensible as the interpretation the adjudicator gave to the relevant collective agreement provisions is one that they can reasonably bear. Contrary to what the applicant asserts, the collective agreement provisions at issue in this case do not give rise to only a single possible interpretation. Rather, in our view, they can be reasonably read either in the way the employer asserted or in the way the union asserted, and it was therefore open to the adjudicator to select one of these two options.

[8] More specifically, we do not see that article 25.11 of the collective agreement has any bearing on the issue before the adjudicator. As for paragraph 25.13(d) of the collective agreement, we believe that the meaning ascribed to the paragraph by the adjudicator is a possible interpretation of the paragraph. The averaging provisions in the collective agreement provide for averaging the number of hours of non-overtime work over the period of the schedule and the words in paragraph 25.13(d)(i) can be read as requiring the crediting of 7.5 hours of non-overtime work for designated holidays to employees on a variable schedule, regardless of whether they work or not. Paragraph 25.13(d)(i) is not limited on its face to only those variable shift workers who do not work on the holiday. It is thus possible to read paragraph 25.13(d)(i) of the collective agreement as meaning that, for averaging purposes, all employees on a variable schedule are to be credited with 7.5 non-overtime hours for a designated holiday. Under this reading, it is paragraph 25.13(d)(ii) that provides for extra compensation for the hours worked on

a holiday, through payment of premium pay (at time and a half) for all hours worked up to an employee's usual hours and double time thereafter.

[9] The employer paid premium pay to the variable shift workers who worked on designated paid holidays on this basis in the present case. The present case may therefore be reasonably distinguished from the case law relied upon by the applicant, where the employer sought to pay less and made deductions from premium pay that were found to be unjustified. As the employer did not make similar deductions in this case, the adjudicator's distinction of the prior awards was reasonable.

[10] In sum, despite the able arguments advanced both in writing and orally before us by counsel for the applicant, we cannot find the adjudicator's decision to be unreasonable as the reasons offered by the adjudicator are adequate and the result reached is a possible defensible and justifiable outcome, especially in view of the broad margin of appreciation to be given in a case such as this. It therefore follows that this application for judicial review will be dismissed. By agreement, there shall be no order as to costs.

"Mary J.L. Gleason"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-354-15

STYLE OF CAUSE: PUBLIC SERVICE ALLIANCE OF
CANADA v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 15, 2016

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
NEAR J.A.
GLEASON J.A.

DELIVERED FROM THE BENCH BY: GLEASON J.A.

APPEARANCES:

Andrew Raven FOR THE APPLICANT
Kim Patenaude
Pierre-Marc Champagne FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raven, Cameron, Ballantyne & Yazbeck LLP FOR THE APPLICANT
Barristers and Solicitors
Ottawa, Ontario

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