Federal Court of Appeal

Cour d'appel fédérale

Date: 20170413

Dockets: A-222-15
A-161-16
A-294-15
A-157-16

Citation: 2017 FCA 78

CORAM: NEAR J.A.
BOIVIN J.A.
RENNIE J.A.

Dockets: A-222-15
A-161-16

BETWEEN:

FEDEX FREIGHT CANADA, CORP.

Applicant

and

TEAMSTERS LOCAL UNION NO. 31

Respondent

Dockets: A-294-15
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AND BETWEEN:

TEAMSTERS LOCAL UNION NO. 31

Applicant

and

FEDEX FREIGHT CANADA CORP.

Respondent

Heard at Vancouver, British Columbia, on February 1, 2017.

Judgment delivered at Ottawa, Ontario, on April 13, 2017.

REASONS FOR JUDGMENT BY:	NEAR J.A.
CONCURRED IN BY:	BOIVIN J.A. RENNIE J.A.

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REASONS FOR JUDGMENT

NEAR J.A.

I. Introduction

[1] At issue are four consolidated applications for judicial review of two decisions by the Canada Industrial Relations Board (the Board). Underlying these two decisions was a complaint by Teamsters Local Union No. 31 (the Union). The complaint alleged that FedEx Freight Canada, Corp. (the Employer) had violated various provisions of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the Code) in deciding to close the Surrey Service Centre and return to using local third-party cartage agents shortly after the Union had been certified to represent the 'dock associates' working at the Centre.

[2] In the Original Decision, issued March 30, 2015, the Board found that the Employer had not violated subsections 50(*a*) or 50(*b*) of the Code but had violated paragraphs 94(1)(*a*) and 94(3)(*a*) (2015 CIRB 770). The Board ordered a remedy that would require the Employer, in the event of a closure of the Surrey Service Centre, to ensure that (i) every dock associate would be offered employment by the third-party cartage agent on similar terms and conditions and, (ii) the Union is recognized as the representative for the dock associates if the employees of the third-party cartage agent were not represented by a different trade union.

[3] Both the Union and the Employer applied for reconsideration of the Board's original decision. In the Reconsideration Decision, issued April 22, 2016, the Board found no grounds on which to justify a reconsideration of the Original Decision (2016 CIRB 824).

[4] Both the Union and the Employer seek judicial review of both the Original Decision and the Reconsideration Decision. For the reasons that follow, I would dismiss all four applications for judicial review.

II. Background

[5] On January 1, 2013, the Employer opened the Surrey Service Centre. Previously, the Employer had used third-party cartage agents to pick up and deliver freight in British Columbia on its behalf.

[6] On June 4, 2014, the Union filed an application with the Board for certification as the bargaining agent for the dock associates working at the Surrey Service Centre. On September 15, 2014, the Board certified the Union making it the first unionization of employees at any FedEx location in Canada. On September 18, 2014, the Union served notice to bargain on the Employer.

[7] The Union and the Employer first met to commence collective bargaining on November 4, 2014. At the outset of this meeting, the Employer informed the Union that it had decided to close the Surrey Service Centre and to return to the third-party cartage model.

[8] The Employer and the Union met on subsequent occasions between November 10, 2014 and February 16, 2015.

[9] On November 27, 2014, in response to the announced closure of the Surrey Service Centre, the Union filed a complaint with the Board. The Union alleged that the Employer violated section 50 and subsections 94(1) and 94(3) of the Code.

III. The Board's Original Decision

[10] The original panel of the Board determined that the Employer had not violated subsection 50(*a*) – the duty to bargain in good faith and make every reasonable effort to reach a collective agreement. The Board accepted the Employer's evidence of the history of bargaining and noted that the Union had not communicated any concerns with the progress or pace of negotiations (Original Decision at paras. 34-37).

[11] The Board also found that the Employer did not violate subsection 50(*b*), which prohibits employers from unilaterally changing employees' terms and conditions of employment during a freeze period. The Board determined that the Union had failed to demonstrate that the dock associates had an "express or implied guarantee of permanent employment". The Board did not agree that a prohibited change in terms and conditions of employment could be based on "a *bona fide* announcement of an impending closure for economic reasons, absent the actual implementation of that closure or an effort to use the announcement as a bargaining tactic" (Original Decision at paras. 38-40).

[12] Next, the Board determined that it was "self-evident" that the Employer's closure announcement interfered with the formation and administration of the Union and its representation of the dock associates, contrary to paragraph 94(1)(*a*) of the Code (Original Decision at para. 42). The Board found *prima facie* evidence of the Employer's anti-union philosophy, which rendered unlawful the employer's otherwise lawful right to close its business. The Board supported this determination with its findings relating to the complaint under paragraph 94(3)(*a*) of the Code.

[13] Lastly, the Board determined that the employer had discriminated against the dock associates because they participated in the formation of a trade union, contrary to subparagraph 94(3)(*a*)(i) of the Code. The Board found that the employer had failed to demonstrate that its closure decision and announcement were free from anti-union *animus*. The Board found that the timing and manner of the decision was suspicious, as it was made so soon after certification and based on insufficient information and a lack of consultation (Original Decision at paras. 46-51).

[14] In considering a remedy for the breaches of paragraph 94(3)(*a*) and subparagraph 94(3)(*a*)(i) of the Code, the Board indicated that it would not compel an employer to continue operating "a truly uneconomic undertaking" (Original Decision at para. 55). Instead, the Board sought to put the parties back in the position before the violations occurred – where the "employees' wish to be represented by a trade union and the union's representation rights are both respected" (Original Decision at para. 55). The Board ordered the following remedy

> In the event that the employer proceeds with the closure of the Surrey centre, it is required to include provisions in any contract that it enters into with any and all third party cartage agents selected to do the work currently done by the members of the union's bargaining unit which ensure that:
>
> > (a) Every dock associate working at the Surrey centre on the date of this decision is offered employment by the third-party cartage agent, on terms and conditions that are no less than those they are receiving on that date or, in the event that FFCC and Teamsters 31 reach a collective agreement for the Surrey centre bargaining unit prior to the date of the transfer, on the terms and conditions contained in that collective agreement; and
> >
> > (b) If the employees of the third-party cartage agent are not represented by a trade union, then the third-party cartage agent must voluntarily recognize Teamsters Local Union No. 31 as the representative of all employees performing dock work who are assigned to the FedEx Freight Canada Corp. contract.
>
> (Original Decision at para. 57)

[15] On April 29, 2015, the Employer filed an application for judicial review of the Board's Original Decision. On May 6, 2015, both the Employer and Union submitted reconsideration applications to the Board pursuant to section 18 of the Code. On June 22, 2015, the Union filed an application for judicial review of the Board's Original Decision.

IV. The Board's Reconsideration Decision

[16] In a supplement to its reconsideration application, the Union submitted that the Employer had closed the Surrey Service Centre and contracted the work of the dock associates to a third party. The Union alleged that this was a 'new fact' which was not available at the time of the hearing or the filing of the reconsideration application and that it would likely have caused the Board to reach a different conclusion in the Original Decision.

[17] The reconsideration panel of the Board was not persuaded that any grounds raised by the parties justified reconsideration of the Original Decision. The Board found that the Original Decision contained no error of law or policy and that both parties' reconsideration applications amounted to requests to reassess the evidence and reach a different conclusion. The Board declined to interfere with the original panel's exercise of discretion in fashioning a remedy. The Board also determined that the actual closure of the Surrey Service Centre was not a 'new fact' that would trigger reconsideration of a past decision because it was an event that occurred after the Original Decision. The Board was not going to interfere with the original panel's refusal to maintain jurisdiction over the actual closure of the Surrey Service Centre. The Board dismissed both parties' applications for reconsideration.

[18] On May 19 and May 24, 2016, respectively, the Union and Employer filed applications for judicial review of the Board's Reconsideration Decision.

V. Issues

[19] I would characterize the issues before this Court as follows:

1. Was the Board's decision to dismiss the parties' applications for reconsideration of the Original Decision reasonable?

2. Was the Board's Original Decision, including the ordered remedy, reasonable?

VI. Analysis

A. *Reconsideration Decision*

[20] It is well-established that reasonableness is the standard of review applicable to the Board's Reconsideration Decision (*Bradford v. National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-CANADA)*, 2015 FCA 84 at para. 18, 2015 C.L.L.C. 220-037; *Remstar Corp. v. Syndicat des employées de TQS Inc*, 2011 FCA 183 at para. 3; 2012 C.L.L.C. 220-037). The Union asks this Court to review the Board's decision not to accept the new evidence of actual closure on the correctness standard as it amounts to an issue of natural justice.

[21] Consistent with the Board's past jurisprudence, the Board reaffirmed that its reconsideration power is only to be exercised in exceptional circumstances and is not intended to be used as an appeal of an original decision (Reconsideration Decision at para. 11). The Board repeatedly noted that it would not substitute its assessment of the evidence for that of the original panel nor second-guess the original panel's exercises of discretion (Reconsideration Decision at paras. 11, 24, 38, 64, 96, 101).

[22] In my view, the Board reasonably dismissed the parties' applications for reconsideration. Given the limited scope of reconsideration, I find that the Board did not commit a reviewable error in declining to reconsider the Union's proposed 'new fact' evidence. The fact of closure could not have been put before the original panel because it did not yet exist. Further, I agree with the Board that assessing the new evidence would have amounted to reconsidering the original panel's decision not to retain jurisdiction over the closure, absent a justifiable ground. I find that both parties put forward largely the same arguments before the reconsideration panel as they did before the original panel. In my view, the parties were disputing the findings in the Original Decision in the hope that the reconsideration panel would reassess the evidence and substitute its own opinion on the merits for that of the original panel. The reconsideration panel reasonably declined to do so. As the parties also sought judicial review of the Original Decision, it is properly before this Court and is discussed below.

B. *Original Decision*

[23] The standard of review applicable to the Board's decision on the merits of the Union's complaint and the ordered remedy is reasonableness (*C.A.S.A.W., Local 4 v. Royal Oak Mines Inc.*, [1996] 1 S.C.R. 369 at 394, 404-05, [1996] S.C.J. No. 14 (QL) [*Royal Oak*]; *New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9 at paras. 54-55, [2008] 1 S.C.R. 190; *Listuguj Mi'gmaq First Nation v. Public Service Alliance of Canada*, 2015 FCA 243 at para. 3, 2016 C.L.L.C. 220-012).

(1) Subsection 50(*a*): No bad faith bargaining

[24] The Union submits that the Board erred in finding that the Employer was bargaining in good faith in accordance with subsection 50(*a*) of the Code. The Union argues that the Board focused solely on the motions of the bargaining process instead of examining "the subjective and objective evidence of the Employer's true intentions" (Applicant's Memorandum of Fact and Law, Teamsters Local Union No. 31 at para. 33).

[25] In my view, the Board reasonably applied the requirements of subsection 50(*a*). I disagree with the Union's argument that the Board's finding that the Employer violated section 94 of the Code necessarily leads to a finding of bad faith bargaining. The Board recognized the two particular components of subsection 50(*a*) – the duty to enter into bargaining in good faith and the duty to make every reasonable effort to enter into a collective agreement (Original Decision at para. 37). The Board accepted the evidence of the Employer's representative concerning the history of bargaining (Original Decision at para. 34). The Board did not accept that any delays or lack of progress were due to the Employer's bad faith as the Union was either in agreement with the process or did not communicate concerns to the employer (Original Decision at paras. 35-36). Further, the Union's witnesses admitted that there was some bargaining progress that had occurred in accordance with the Union's past practice (Original Decision at para. 36). On judicial review, it is not the role of this Court to reweigh the evidence before the Board and the Union has not persuaded me that the Board's assessment of the evidence was unreasonable.

(2) Subsection 50(*b*): No violation of the freeze on conditions of employment

[26] The Union submits that the Board erred in finding that the Employer did not change the terms and conditions of employment during the prohibition period provided for under subsection 50(*b*) of the Code. The Union argues that the termination of employment is prohibited by the statutory freeze and that the Employer is unable to justify its decision because it was motivated by anti-union *animus*. Further, the Union argues that the Board erred in considering only the announcement of the closure, not the actual layoffs and contracting out that was to occur.

[27] Before the original panel, the Union admitted that the Employer had not changed the dock associates' wages or other benefits but argued that the intended closure of the Surrey Service Centre effectively converted the dock associates' employment from permanent to tenuous and short-term. The Supreme Court of Canada (the SCC) recognized that a statutory freeze covers the condition of "continued employment" (*United Food and Commercial Workers, Local 503 v. Wal-Mart Canada Corp.*, 2014 SCC 45 at para. 43, [2014] 2 S.C.R. 323 [*Wal-Mart*]). However, unlike in *Wal-Mart*, the Surrey Service Centre had not yet closed and there had been no termination of employment when the original panel heard the complaint.

[28] In my view, it was not unreasonable for the Board to assess whether there had been an actual change in the dock associates' terms and conditions of employment based on the circumstances at the time (i.e. a closure had been announced but not yet implemented). Underlying the Union's challenge to the Board's subsection 50(*b*) determination is the Union's dissatisfaction with the Board's refusal to retain jurisdiction over the actual closure. While the Board has the authority to retain jurisdiction of a dispute under subsection 20(1) of the Code, the

Union has not demonstrated that the Board's exercise of discretion not to do so was unreasonable.

[29] In any event, the condition of continued employment is not absolute and the employment relationship does not become any more certain during a freeze period than it was before (*Wal-Mart* at para. 45). According to the SCC, a freeze provision does not operate to paralyze a business; the employer always retains its general management power (*Wal-Mart* at paras. 43, 47). To be considered a prohibited change in terms and conditions of employment, the onus is on the union to demonstrate that the change was inconsistent with "normal management practices" (*Wal-Mart* at para. 46).

[30] It is clear that the Board turned its mind to these principles articulated in *Wal-Mart*. The Board observed that "layoffs due to economic conditions are an unfortunate reality of any workplace and, in most cases, can be considered part of the normal operation of any business" (Original Decision at para. 39). Further, when explaining its remedy, the Board noted that it was "not inclined to force an employer to continue to operate a truly uneconomic undertaking" (Original Decision at para. 55).

[31] I disagree with the Union that the presence of anti-union *animus* necessarily transforms a business change into a freeze violation. The test under subsection 50(*b*) is an objective one. According to the SCC, the statutory freeze is "not directly concerned with the punishment of anti-union conduct" and will apply regardless of whether the employer's decision was motivated by anti-union *animus* (*Wal-Mart* at para. 38). In its subsection 50(*b*) analysis, the Board

determined that the closure announcement was *bona fide* and not a bargaining tactic (Original Decision at para. 39). This finding shows that an objective of the freeze provision, to foster good faith bargaining, was not being undermined (see *Wal-Mart* at para. 34).

[32] I recognize that improper motives behind a change in conditions of employment may assist in determining whether an employer is departing from past management practices contrary to subsection 50(*b*). I also recognize that findings of a freeze violation and anti-union *animus* often go together. Further, I find it unusual that, when assessing the Union's complaint under subparagraph 94(3)(*a*)(i), the Board considered the Employer's "business as before argument" (Original Decision at para. 50) and whether the information the Employer had before it was adequate "from the perspective of any reasonable business person" (Original Decision at para. 47). I would expect to see these considerations in the Board's analysis of subsection 50(b). However, I am not prepared to conclude that it was unreasonable for the Board to leave its assessment of the Employer's anti-union *animus* to section 94.

(3) Subparagraph 94(3)(*a*): Discrimination based on union participation

[33] The Employer submits that the Board erred in conflating the tests under paragraphs 94(1)(*a*) and 94(3)(*a*) of the Code. The Employer argues that subparagraph 94(3)(*a*)(i) distinctly involves assessing whether an employer's actions toward an employee were influenced by the latter's membership in a bargaining unit. The Employer argues that there was no discrimination because it was closing the entire Surrey Service Centre and terminating all employees (whether unionized or not) for economic reasons that were supported by uncontradicted evidence.

[34] In my view, the Board reasonably found that the Employer breached subparagraph 94(3)(*a*)(i). Complaints under section 94(3) of the Code are subject to the reverse onus provision contained in subsection 98(4) which means that the complaint itself was evidence of a violation and the Employer had the onus to prove the contrary. I do not accept that simply because the Employer intended to terminate all of the employees of the Surrey Service Centre, whether unionized or not, that the Employer's decision, if tainted by anti-union *animus*, could not still reasonably be found to have violated subsection 94(3). No matter the validity of the Employer's economic reasons for closure, it still had to demonstrate that its action was free from anti-union *animus*. The Board assessed the evidence surrounding the closure decision and determined that the suspicious timing and manner of the decision was such that the Employer could not rebut the presumption of discrimination based on union participation. The Employer has not persuaded me that the Board's assessment of the evidence was unreasonable.

(4) Paragraph 94(1)(*a*): Interference with union and its representation

[35] The Employer submits that the Board erred in finding that it interfered with the formation and administration of the Union and its representation of the dock associates. The Employer argues that it had a legitimate business interest for closing the Surrey Service Centre and its expressions of a preference to operate without a union did not constitute unlawful anti-union *animus*. Further, the Employer relies on the Board's finding of good faith bargaining to refute the finding that the closure announcement seriously impacted the Union's ability to protect the dock associates' interests.

[36] In my view, it was open to the Board to conclude that a major business change, such as an intended closure, can have a serious impact on the members of a bargaining unit and the union's ability to represent them. Although not required to find a violation of paragraph 94(1)(*a*), in light of the Board's finding of anti-union *animus*, it was reasonable for the Board to determine that, even though the Employer had a business justification for the closure, its decision constituted a prohibited interference.

(5) Remedy

[37] Both the Union and the Employer challenge the remedy ordered by the original panel of the Board. The Employer submits that the remedy is unreasonable because (i) it was punitive, rather than compensatory; (ii) it undermined the Code's objectives and, (iii) it bore no rational connection to the breach of section 94 found by the Board. The Union submits that the remedy is unreasonable because it was ineffective and unenforceable.

[38] Under section 99 of the Code, the Board may order certain remedial measures depending on which provisions of the Code have been violated. For example, in respect of a violation of paragraph 94(3)(*a*), the Board may require an employer to continue to employ a person (see Code, subparagraph 99(1)(*c*)(i)). In addition, the Board is empowered with a general remedial power pursuant to subsection 99(2) of the Code. As the SCC determined:

> …[R]emedies are a matter which fall directly within the specialized competence of labour boards. It is this aspect perhaps more than any other function which requires the board to call upon its expert knowledge and wide experience to fashion an appropriate remedy. No other body will have the requisite skill and experience in labour relations to construct a fair and workable solution which will enable the parties to arrive at a final resolution of their dispute. Imposing remedies comprises a significant portion of the Board's duties. Section 99(2) of the Canada Labour Code recognizes the importance of this role and accordingly,

> gives the Board wide latitude and discretion to fashion “equitable” remedies which it feels will best address the problem and resolve the dispute. By providing that the Board may fashion equitable remedies Parliament has given a clear indication that the Board has been entrusted with wide remedial powers.
>
> (*Royal Oak* at 404-05)

[39] The original panel properly cited the principles underlying its remedial authority: the order must be rationally connected to the Code violation and its consequences; and the Board should put the parties in the position they would have been had the breach not occurred (see *Royal Oak*). The Board reasonably constructed a remedy on the basis that the closure had not yet occurred. In my view, the ordered remedy struck an appropriate balance between the Employer’s economic interests in closing the Surrey Service Centre and the Union’s interest in protecting its rights and its members. Ensuring that the employees have an opportunity to continue to be employed in accordance with any rights gained through collective bargaining and that the Union has the opportunity to represent them is directly related to the effect of interference in union representation and discrimination based on union participation. Further, the ordered remedy is consistent with the objectives of the Code which include: the promotion of the common well-being; the encouragement of free collective bargaining; the constructive settlement of disputes; freedom of association and free collective bargaining as the bases of effective industrial relations; good working conditions and sound labour-management relations; and good industrial relations which are in the best interests of Canada in ensuring a just share of the fruits of progress to all (the Code, Preamble; *Royal Oak* at 411-12).

[40] In the event that this Court found the Board’s remedy reasonable, the Employer sought a declaration that it “fully and finally met all necessary obligations” set out in the original panel’s

order (Applicant's Memorandum of Fact and Law, FedEx Freight Canada, Corp at paras. 81, 83). I find no need to consider such a request.

Conclusion

[41] For the foregoing reasons, I would dismiss all four applications for judicial review. Given the parties' mixed success and the particular circumstances of this matter, I would not award any costs.

"David G. Near"

J.A.

"I agree.
Richard Boivin J.A."

"I agree.
Donald J. Rennie J.A."

APPENDIX

Canada Labour Code, R.S.C. 1985, c. L-2

Code canadien du travail, L.R.C. 1985, ch. L-2

18 The Board may review, rescind, amend, alter or vary any order or decision made by it, and may rehear any application before making an order in respect of the application.

18 Le Conseil peut réexaminer, annuler ou modifier ses décisions ou ordonnances et réinstruire une demande avant de rendre une ordonnance à son sujet.

20 (1) Where, in order to dispose finally of an application or complaint, it is necessary for the Board to determine two or more issues arising therefrom, the Board may, if it is satisfied that it can do so without prejudice to the rights of any party to the proceeding, issue a decision resolving only one or some of those issues and reserve its jurisdiction to dispose of the remaining issues.

20 (1) Dans les cas où, pour statuer de façon définitive sur une demande ou une plainte, il est nécessaire de trancher auparavant plusieurs points litigieux, le Conseil peut, s'il est convaincu de pouvoir le faire sans porter atteinte aux droits des parties en cause, rendre une décision ne réglant que l'un ou certains des points litigieux et différer sa décision sur les autres points.

22 (1) Subject to this Part, every order or decision of the Board is final and shall not be questioned or reviewed in any court, except in accordance with the *Federal Courts Act* on the grounds referred to in paragraph 18.1(4)(a), (b) or (e) of that Act.

22 (1) Sous réserve des autres dispositions de la présente partie, les ordonnances ou les décisions du Conseil sont définitives et ne sont susceptibles de contestation ou de révision par voie judiciaire que pour les motifs visés aux alinéas 18.1(4)a), b) ou e) de la *Loi sur les Cours fédérales* et dans le cadre de cette loi.

50 Where notice to bargain collectively has been given under this Part,

50 Une fois l'avis de négociation collective donné aux termes de la présente partie, les règles suivantes s'appliquent :

(a) the bargaining agent and the employer, without delay, but in any case within twenty days after the notice was given unless the parties otherwise agree, shall

a) sans retard et, en tout état de cause, dans les vingt jours qui suivent ou dans le délai éventuellement convenu par les parties, l'agent négociateur et l'employeur doivent :

(i) meet and commence, or cause authorized representatives

(i) se rencontrer et entamer des négociations collectives de

on their behalf to meet and commence, to bargain collectively in good faith, and

(ii) make every reasonable effort to enter into a collective agreement; and

(b) the employer shall not alter the rates of pay or any other term or condition of employment or any right or privilege of the employees in the bargaining unit, or any right or privilege of the bargaining agent, until the requirements of paragraphs 89(1)(a) to (d) have been met, unless the bargaining agent consents to the alteration of such a term or condition, or such a right or privilege.

bonne foi ou charger leurs représentants autorisés de le faire en leur nom;

(ii) faire tout effort raisonnable pour conclure une convention collective;

b) tant que les conditions des alinéas 89(1)a) à d) n'ont pas été remplies, l'employeur ne peut modifier ni les taux des salaires ni les autres conditions d'emploi, ni les droits ou avantages des employés de l'unité de négociation ou de l'agent négociateur, sans le consentement de ce dernier.

94 (1) No employer or person acting on behalf of an employer shall

(a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union; or

(b) contribute financial or other support to a trade union.

94 (1) Il est interdit à tout employeur et à quiconque agit pour son compte :

a) de participer à la formation ou à l'administration d'un syndicat ou d'intervenir dans l'une ou l'autre ou dans la représentation des employés par celui-ci;

b) de fournir une aide financière ou autre à un syndicat.

(3) No employer or person acting on behalf of an employer shall

(a) refuse to employ or to continue to employ or suspend, transfer, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment or intimidate, threaten or otherwise discipline any person, because the person

(3) Il est interdit à tout employeur et à quiconque agit pour son compte :

a) de refuser d'employer ou de continuer à employer une personne, ou encore de la suspendre, muter ou mettre à pied, ou de faire à son égard des distinctions injustes en matière d'emploi, de salaire ou d'autres conditions d'emploi, de l'intimider, de la menacer ou de prendre d'autres mesures disciplinaires à son encontre pour l'un ou l'autre

des motifs suivants :

(i) is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of a trade union or participates in the promotion, formation or administration of a trade union,

…

(i) elle adhère à un syndicat ou en est un dirigeant ou représentant — ou se propose de le faire ou de le devenir, ou incite une autre personne à le faire ou à le devenir —, ou contribue à la formation, la promotion ou l'administration d'un syndicat,

…

98(4) Where a complaint is made in writing pursuant to section 97 in respect of an alleged failure by an employer or any person acting on behalf of an employer to comply with subsection 94(3), the written complaint is itself evidence that such failure actually occurred and, if any party to the complaint proceedings alleges that such failure did not occur, the burden of proof thereof is on that party.

98(4) Dans toute plainte faisant état d'une violation, par l'employeur ou une personne agissant pour son compte, du paragraphe 94(3), la présentation même d'une plainte écrite constitue une preuve de la violation; il incombe dès lors à la partie qui nie celle-ci de prouver le contraire.

99 (1) Where, under section 98, the Board determines that a party to a complaint has contravened or failed to comply with subsection 24(4) or 34(6), section 37, 47.3, 50 or 69, subsection 87.5(1) or (2), section 87.6, subsection 87.7(2) or section 94, 95 or 96, the Board may, by order, require the party to comply with or cease contravening that subsection or section and may

(c) in respect of a failure to comply with paragraph 94(3)(a), (c) or (f), by order, require an employer to

(i) employ, continue to employ or permit to return to the duties of their employment any employee or other person whom

99 (1) S'il décide qu'il y a eu violation des paragraphes 24(4) ou 34(6), des articles 37, 47.3, 50 ou 69, des paragraphes 87.5(1) ou (2), de l'article 87.6, du paragraphe 87.7(2) ou des articles 94, 95 ou 96, le Conseil peut, par ordonnance, enjoindre à la partie visée par la plainte de cesser de contrevenir à ces dispositions ou de s'y conformer et en outre :

c) dans le cas des alinéas 94(3)a), c) ou f), enjoindre, par ordonnance, à l'employeur :

(i) d'embaucher, de continuer à employer ou de reprendre à son service l'employé ou toute autre personne, selon le cas, qui a fait

the employer or any person acting on behalf of the employer has refused to employ or continue to employ, has suspended, transferred, laid off or otherwise discriminated against, or discharged for a reason that is prohibited by one of those paragraphs,

(ii) pay to any employee or other person affected by that failure compensation not exceeding such sum as, in the opinion of the Board, is equivalent to the remuneration that would, but for that failure, have been paid by the employer to that employee or other person, and

…

l'objet d'une mesure interdite par ces alinéas,

(ii) de payer à toute personne touchée par la violation une indemnité équivalant au plus, à son avis, à la rémunération qui lui aurait été payée par l'employeur s'il n'y avait pas eu violation,

…

(2) For the purpose of ensuring the fulfilment of the objectives of this Part, the Board may, in respect of any contravention of or failure to comply with any provision to which subsection (1) applies and in addition to or in lieu of any other order that the Board is authorized to make under that subsection, by order, require an employer or a trade union to do or refrain from doing any thing that it is equitable to require the employer or trade union to do or refrain from doing in order to remedy or counteract any consequence of the contravention or failure to comply that is adverse to the fulfilment of those objectives.

(2) Afin d'assurer la réalisation des objectifs de la présente partie, le Conseil peut rendre, en plus ou au lieu de toute ordonnance visée au paragraphe (1), une ordonnance qu'il est juste de rendre en l'occurrence et obligeant l'employeur ou le syndicat à prendre des mesures qui sont de nature à remédier ou à parer aux effets de la violation néfastes à la réalisation de ces objectifs.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

AN APPLICATION FOR JUDICIAL REVIEW OF A DECISION ISSUED BY THE CANADA INDUSTRIAL RELATIONS BOARD DATED MARCH 30, 2015, BOARD FILE NOS. 30782-C AND 30783-C; AND

AN APPLICATION FOR JUDICIAL REVIEW OF A RECONSIDERATION DECISION ISSUED BY THE CANADA INDUSTRIAL RELATIONS BOARD DATED APRIL 22, 2016, BOARD FILE NOS. 31064-C AND 31065-C.

DOCKETS:	A-222-15 A-161-16
STYLE OF CAUSE:	FEDEX FREIGHT CANADA CORP. v. TEAMSTERS LOCAL UNION NO. 31
AND DOCKETS:	A-294-15 A-157-16
STYLE OF CAUSE:	TEAMSTERS LOCAL UNION NO. 31 v. FEDEX FREIGHT CANADA CORP
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	FEBRUARY 1, 2017
REASONS FOR JUDGMENT BY:	NEAR J.A.
CONCURRED IN BY:	BOIVIN J.A. RENNIE J.A.
DATED:	APRIL 13, 2017

APPEARANCES:

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Michael Sherrard Gerald Griffiths	FOR THE RESPONDENT/ APPLICANT FEDEX FREIGHT CANADA CORP.

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