Federal Court of Appeal | Cour d'appel fédérale

Date: 20170330

Docket: A-68-16

Citation: 2017 FCA 62

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

BETWEEN:

FRANKLIN E. CHIN QUEE

Applicant

and

TEAMSTERS LOCAL #938 and
1ST STUDENT CANADA

Respondents

Heard at Toronto, Ontario, on March 29, 2017.
Judgment delivered at Toronto, Ontario, on March 30, 2017.

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: NEAR J.A.
RENNIE J.A.

Federal Court of Appeal  Cour d'appel fédérale

Date: 20170330

Docket: A-68-16

Citation: 2017 FCA 62

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

BETWEEN:

FRANKLIN E. CHIN QUEE

Applicant

and

TEAMSTERS LOCAL #938 and
1ST STUDENT CANADA

Respondent

REASONS FOR JUDGMENT

GLEASON J.A.

[1] In this application for judicial review, Mr. Chin Quee seeks to set aside the decision of the Canada Industrial Relations Board (the CIRB or the Board), dated January 27, 2016, in which the Board dismissed his application under section 37 of the *Canada Labour Code*, R.S.C. 1985, c. L-2. That provision prohibits a trade union from acting in a manner that is arbitrary, discriminatory or in bad faith in its representation of a bargaining unit member.

[2] The deferential reasonableness standard is applicable to the review of the Board's decision. Thus, this Court cannot intervene unless the Board's decision is unreasonable: *Dumont v. Canadian Union of Postal Workers*, 2011 FCA 185 at paras. 33-34, 423 N.R. 143.

[3] At the outset of the hearing, Mr. Chin Quee sought to file an additional affidavit, containing several exhibits. We indicated that we would rule on this request at the end of the case.

[4] I would determine that Mr. Chin Quee's additional materials are inadmissible as they were not before the CIRB when it made the decision under review in this application and do not fall into any of the exceptions as to when additional evidence may be adduced in the context of a judicial review application.

[5] It is well settled that, in general, a judicial review application is to be determined based on the record that was before the administrative decision-maker. The recognized exceptions to this rule are narrow and generally involve only three types of evidence: general evidence of a background nature that is of assistance to the Court; evidence that is relevant to an alleged denial of procedural fairness by the decision-maker that is not evident in the record before the decision-maker; or evidence that demonstrates the complete lack of evidence before a decision-maker for an impugned finding: *Association of Universities and Colleges of Canada v. Canadian Copyright Licencing Agency (Access Copyright)*, 2012 FCA 22 at paras. 18-20, 428 N.R. 297; *International Relief Fund for the Afflicted and Needy (Canada) v. Canada (National Revenue)*,

2013 FCA 178 at para. 10, 2013 D.T.C. 5161. As the evidence sought to be tendered by Mr. Chin Quee does not fall into any of the foregoing exceptions, it is inadmissible.

[6] The same applies to Mr. Chin Quee's original affidavit, filed in support of this application, to which the respondent union also objects. It was not before the CIRB when it made the impugned decision and does not fall into one of the exceptional situations where additional evidence may be filed in the context of a judicial review application. I accordingly would not have regard to this affidavit in deciding this application.

[7] In any event, the content of both affidavits is irrelevant to the issues before us.

[8] Turning to the merits of Mr. Chin Quee's application, the focus of his submissions before the CIRB turned on his disagreement with a provision in the collective agreement, which he claimed violated his entitlements under minimum standards legislation. However, that is not the issue before us. We are not called on to determine the legality of the collective agreement provisions in question, nor to rule on whether his employer possessed just cause to terminate his employment, nor to determine whether he was dismissed or constructively dismissed, nor to assess the merits of the grievance that he filed contesting that discharge (that the respondent union declined to refer to arbitration). Rather, our inquiry concerns only whether the CIRB's decision in dismissing Mr. Chin Quee's unfair representation complaint was reasonable.

[9] We see nothing unreasonable in the Board's decision in the present case. The CIRB wrote fulsome and well-articulated reasons, applied its settled case law to the assessment of the

respondent union's conduct and there was ample basis on the record before it from which it could reasonably conclude that the respondent had not violated its obligations under section 37 of the *Canada Labour Code*. In short, the materials before the Board provided it with a solid basis from which to conclude that the union had demonstrated that it fairly, honestly and without discrimination assessed the merits of Mr. Chin Quee's grievance and concluded that it had little chance of success. The union also demonstrated that it had represented Mr. Chin Quee in the disciplinary process and the grievance procedure. Contrary to what Mr. Chin Quee asserts, the union did not err in filing a grievance contesting his dismissal as opposed to challenging an alleged constructive dismissal because the appropriate grievance in the circumstances was one contesting the dismissal. It was therefore open to the CIRB to find that the union's decision not to refer the grievance to arbitration and the union's treatment of Mr. Chin Quee did not violate section 37 of the *Canada Labour Code*.

[10] I would therefore dismiss this application for judicial review, with costs, which I would fix in the all-inclusive amount of $4000.00.

"Mary J.L. Gleason"

J.A.

"I agree

D.G. Near J.A"

"I agree

Donald J. Rennie J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-68-16
STYLE OF CAUSE:	FRANKLIN E. CHIN QUEE v. TEAMSTERS LOCAL #938 and 1ST STUDENT CANADA
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	MARCH 29, 2017
REASONS FOR JUDGMENT BY:	GLEASON J.A.
CONCURRED IN BY:	NEAR J.A. RENNIE J.A.

APPEARANCES:

Franklin E. Chin Quee	FOR THE APPLICANT (SELF-REPRESENTED)
Shaun O'Brien	FOR THE RESPONDENT TEAMSTERS LOCAL #938

SOLICITORS OF RECORD:

N/A	FOR THE APPLICANT (SELF-REPRESENTED)
Cavalluzzo Shilton McIntyre Cornish LLP Barristers and Solicitors Toronto, ON	FOR THE RESPONDENT TEAMSTERS LOCAL #938