

Date: 20091209

Docket: A-188-09

Citation: 2009 FCA 368

**CORAM: NOËL J.A.
NADON J.A.
RYER J.A.**

BETWEEN:

TEAMSTERS CANADA RAIL CONFERENCE

Applicant

and

CANADIAN NATIONAL RAILWAY COMPANY

Respondent

Heard at Ottawa, Ontario, on December 9, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on December 9, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on December 9, 2009)

RYER J.A.

[1] This is an application for judicial review of a decision (Board File: 27285-C; Decision No. 446) of the Canada Industrial Relations Board (the “Board”), dated April 1, 2009, dismissing an application (the “Bargaining Unit Review Application”) by the Teamsters Canada Rail Conference (the “Union”) for a review of the structure of the bargaining units for the “running trades” employees of the Canadian National Railway Company (“CNR”).

[2] The Board found that the Union had the onus of establishing that the existing bargaining unit structure is no longer appropriate for collective bargaining and that a valid labour relations purpose would be achieved by a review of that structure. In concluding that the Union had not met its onus, the Board considered the positions of the parties (paragraphs 4 to 8 of its reasons), the historic and current bargaining activities in respect of the two bargaining units and the broader interests of constructive labour-management relations.

[3] In its challenge to the Board's decision, the Union makes several arguments. First, it alleges that the Board exceeded its jurisdiction by failing to take account of any evidence or submissions of the parties with respect to the merits of the case.

[4] In our view, this argument has no merit. The Board's reasons themselves demonstrate that the submissions of the parties were considered. With respect, the fact that the Board did not accept the Union's submissions does not mean that they were ignored by the Board.

[5] The Union further asserted that the Board stepped outside its jurisdiction in interpreting subsection 18.1(1) of the Code as containing a requirement that the parties must have meaningfully attempted and failed to negotiate a collective agreement before there could be a finding that the existing bargaining unit structure is no longer appropriate. In our view, this argument is based on a misinterpretation of the Board's reasons in paragraph 24 of its decision.

[6] In that paragraph, the Board found that the fact that the parties had never engaged in any bargaining in relation to the CTY bargaining unit was relevant to the current state of bargaining between the parties – one of the factors that it considered in determining whether the existing bargaining structure is no longer appropriate. In making this finding, the Board specifically noted that the motives of the Union in bringing the Bargaining Unit Review Application were not relevant. In our view, the Board made no error that warrants our intervention in making this factual finding.

[7] Finally, the Union argues that the Board failed to adhere to the principles of natural justice by failing to consider the parties' full submissions. We are unable to accept this argument. The Union acknowledges that it did not request an oral hearing when it made its Bargaining Unit Review Application, although it did so in its reply. The Union made its submissions in the Bargaining Unit Review Application that it filed and filed a reply to the submissions that were made by CNR. The fact that CNR did not address the submissions that the Union made when it filed the Bargaining Unit Review Application is irrelevant to this argument, as CNR was under no obligation to do so.

[8] For the foregoing reasons, the application for judicial review will be dismissed with costs.

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-188-09

(Application for judicial review of a decision (Board File: 27285-C; Decision No. 446) of the Canada Industrial Relations Board, dated April 1, 2009)

STYLE OF CAUSE: Teamsters Canada Rail Conference
Applicant
v.
Canadian National Railway
Company Respondent

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: December 9, 2009

REASONS FOR JUDGMENT OF THE COURT BY: (Noël, Nadon, and Ryer, J.J.A.)

DELIVERED FROM THE BENCH BY: Ryer J.A.

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