

Federal Court of Appeal



Cour d'appel fédérale

**Date: 20100426**

**Docket: A-333-09**

**Citation: 2010 FCA 113**

**CORAM: NOËL J.A.  
LAYDEN-STEVENSON J.A.  
STRATAS J.A.**

**BETWEEN:**

**STEVEN MURPHY**

**Applicant**

**and**

**CANADIAN TELECOMMUNICATIONS EMPLOYEES'  
ASSOCIATION and BELL CANADA**

**Respondents**

Heard at Toronto, Ontario, on April 26, 2010.

Judgment delivered at Toronto, Ontario, on April 26, 2010.

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

**STRATAS J.A.**

Federal Court of Appeal



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**Respondents**

**REASONS FOR JUDGMENT OF THE COURT  
(Delivered from the Bench at Toronto, Ontario, on April 26, 2010)**

**STRATAS J.A.**

[1] This is an application for judicial review concerning a decision of the Canada Industrial Relations Board, dated July 30, 2009. The Board dismissed the applicant's complaint that the respondent union breached the duty of fair representation under s. 37 of the *Canada Labour Code*, R.S., 1985, c. L-2, as amended (the Code).

[2] In support of his application, the applicant raises a number of grounds concerning the Board's decision dismissing his complaint. Looking at the applicant's section 37 complaint, it seems to us that it raises two categories of issues.

[3] First, the applicant complained that the union, in agreeing to a letter of intent outside of the collective agreement, deprived its members of the availability of a grievance procedure for final settlement of disputes.

[4] The standard of review of the Board's decision to dismiss this aspect of the complaint is reasonableness. Its decision is protected by a privative clause and is based on principles of labour law within its expertise, which it applied to the facts found by it. The Board also relied upon the reasoning in two earlier decisions made by it in response to others in the union who made the same complaint. No submissions have been made to us that suggest that the Board's decision in this regard was outside the range of outcomes reasonably available to it.

[5] Second, the applicant complained that the union did not adequately disclose information to its members before ratification. Counsel for the respondent concedes that the Board did not explicitly deal with this aspect of the complaint but states that the Board implicitly dealt with it. We are inclined to agree with the respondent on this, but in any event find the respondent's alternative argument to be determinative.

[6] The respondent submitted that the applicant should have sought reconsideration of the Board's decision before coming to this Court on judicial review on this aspect of the complaint. Under section 18 of the Code, the Board has the power, when invited, to reconsider its own decisions.

[7] In our view, where the applicant's concern is that the Board failed to address an aspect of the complaint that was put to it, the applicant should have availed himself of the administrative remedy of reconsideration that was available under section 18 of the Code. It is well-known that, absent exceptional circumstances, an applicant cannot obtain relief on an application for judicial review when it has not exhausted all available administrative remedies: *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61.

[8] Therefore, the application will be dismissed with costs payable only to the respondent union.

“David Stratas”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-333-09

**(APPEAL FROM A JUDGMENT OR ORDER OF THE CANADIAN INDUSTRIAL  
RELATIONS BOARD DATED JULY 30, 2009, IN CIRB FILE NUMBER 26547-C)**

**STYLE OF CAUSE:** STEVEN MURPHY v. CANADIAN  
TELECOMMUNICATIONS  
EMPLOYEES' ASSOCIATION and  
BELL CANADA

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 26, 2010

**REASONS FOR JUDGMENT  
OF THE COURT BY:** NOËL J.A.  
LAYDEN-STEVENSON J.A.  
STRATAS J.A.

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

**APPEARANCES:**

Andrew MacDonald

FOR THE APPLICANT

Larry Steinberg

FOR THE RESPONDENT,  
CANADIAN  
TELECOMMUNICATIONS  
EMPLOYEES' ASSOCIATION

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CANADIAN  
TELECOMMUNICATIONS  
EMPLOYEES' ASSOCIATION