

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20201104**

**Docket: A-473-19**

**Citation: 2020 FCA 190**

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

**BETWEEN:**

**TARIQ RANA**

**Applicant**

**and**

**TEAMSTERS LOCAL UNION NO. 938**

**Respondent**

Heard by online video conference hosted by the registry on November 4, 2020.  
Judgment delivered from the Bench by online video conference on November 4, 2020.

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

**LASKIN J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench by online video conference on November 4, 2020).**

**LASKIN J.A.**

[1] The applicant, Mr. Rana, seeks judicial review of a decision of the Canada Industrial Relations Board (2019 CIRB LD 4231). In its decision, the Board refused reconsideration of the Board's decision (2019 CIRB LD 4112) dismissing a complaint by Mr. Rana that the respondent union breached its duty of fair representation under section 37 of the *Canada Labour Code*, R.S.C. 1985, c. L-2.

[2] Mr. Rana's employer terminated his employment as a truck driver. At Mr. Rana's request, the union grieved his termination, and attempted unsuccessfully to negotiate a settlement. It ultimately decided, and advised Mr. Rana, that it would not pursue the grievance further.

[3] A three-person panel of the Board summarily dismissed Mr. Rana's duty of fair representation complaint. It found that he had failed to make out a *prima facie* case of arbitrary or bad faith conduct on the part of the union. It therefore did not call on the union to respond to the complaint.

[4] Mr. Rana applied for reconsideration of this decision under section 18 of the Code. In his application, he alleged that the panel breached the principles of natural justice and deprived him of a fair hearing by relying on facts outside the record. These were facts, he argued, that the panel either solicited or was solicited to receive, or fabricated, or discovered "with supernatural powers of divination." But for the Board's having done so, he argued, it would have rendered a different decision. He also submitted that the union failed to turn its mind to the grievance, properly address it, or advise him of the reasons for its decision not to pursue it or refer it to arbitration. In a reply that he filed to submissions from the union and the employer, he put forward further facts in support of his contentions.

[5] The application was assigned to a one-person panel of the Board, comprising the vice-chairperson of the Board who had been part of the panel that considered the duty of fair representation complaint. Initially, the application had been assigned to that same panel, but it

was reassigned when one of the panel members recused himself. In correspondence to the Board regarding an interlocutory matter no longer in issue, Mr. Rana had stated that “procedural fairness and natural justice cannot be ensured by the Board if it submits Mr. Rana’s Application for Reconsideration to the same panel that fabricated facts in its initial consideration and dismissal of Mr. Rana’s original Section 37 Complaint [...].”

[6] In concluding that reconsideration was not warranted, the Board addressed Mr. Rana’s position concerning the composition of the panel. It noted that section 12.01 of the Code empowers the Chairperson of the Board to assign panels to matters before the Board. It also referred to Board decisions holding that parties have no right to review the composition of panels (*Canadian Broadcasting Corporation*, 2004 CIRB 262) and that in some cases the original panel may be best placed to consider a reconsideration application (*Scott*, 2012 CIRB LD 2716). It found that Mr. Rana’s case fell into that category, and that the assigned panel’s involvement did not give rise to bias or impair its ability to consider the application fairly and objectively.

[7] The Board went on to consider Mr. Rana’s submission that the panel that dealt with his duty of fair representation complaint had considered facts not properly before it. It found no basis for Mr. Rana’s allegation that the panel had fabricated evidence. It explained that in one instance, the panel had drawn an inference based on the record before it and its general knowledge of the Canadian trucking industry. Even if this inference was discounted, the Board stated, there would be no change in the outcome of the complaint. In dealing with two other findings Mr. Rana disputed, the Board showed how they were supported by the record. The Board also found that Mr. Rana had failed to demonstrate why the additional facts that he put

forward in reply in his reconsideration application could not have been put before the original panel.

[8] In his application to this Court, Mr. Rana appears in a number of respects to be challenging not the reconsideration decision, but the Board's prior decision on his duty of fair representation complaint. This he cannot do: an application for judicial review of a reconsideration decision cannot be used as a vehicle for reviewing the initial decision of the Board (*Remstar Corporation v. Syndicat des employé-es de TQS Inc. (FNC-CSN)*, 2011 FCA 183 at para. 3, leave to appeal refused, [2012] 1 S.C.R. xii).

[9] Mr. Rana has also failed to demonstrate any reviewable error in the reconsideration decision. Reconsideration is an exceptional remedy. As the Board here recognized (citing *Buckmire v. Teamsters Local Union 938*, 2013 CIRB 700 at paras. 37-44), the main grounds on which the Board may reconsider a prior decision of a panel are:

- (1) new facts that the applicant could not have brought to the attention of the original panel and which would likely have caused the Board to arrive at a different conclusion;
- (2) an error of law or policy that casts serious doubt on the interpretation of the Code or Board policy; and
- (3) a failure of the Board to respect a principle of natural justice or procedural fairness.

[10] Mr. Rana devoted much of his oral argument to the submission that he was entitled as a matter of fairness to put forward additional facts in his reply in the reconsideration application. However, he acknowledged that he was aware of these facts when he filed his complaint, and that he had held them back at that time so that they could be used in the reply that he expected to be able to give to the submissions of the union. He submitted that his right to a reply was restored when the Board invited submissions from the union on the reconsideration, and that the Board denied him fairness when it declined to consider the additional facts that he tendered.

[11] In our view, this submission fails to take account of Mr. Rana's obligation to put his best foot forward when making his complaint. He made a tactical decision not to do so. This does not entitle him to put these facts before the reconsideration panel, contrary to the Board's policy reflected in the first ground for reconsideration set out above. We see no reviewable error by the Board in deciding that it would not consider the additional facts on reconsideration.

[12] Mr. Rana also argues that the Board committed an error of policy, so as to satisfy the second ground for reconsideration, in failing to subject the union's conduct to the greater scrutiny required in a termination case. However, the Board specifically found (at p. 6 of the duty of fair representation decision) that the union turned its mind to the situation created by the termination of Mr. Rana's employment. It proceeded to review the union's conduct in some detail. The burden rests with Mr. Rana to show that the Board acted unreasonably in failing to grant reconsideration on this basis, based on the evidence filed in the duty of fair representation complaint (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 100, 441 D.L.R.(4th) 1). In our view, he has not met this burden.

[13] As for the third ground, as already noted, the reconsideration panel considered and rejected Mr. Rana's submission that the panel that dealt with his duty of fair representation complaint had considered facts not properly before it. We see no basis to interfere with this aspect of the panel's decision.

[14] Mr. Rana also again raises allegations of bias, on the part of both the original panel and the reconsideration panel. The allegation against the reconsideration panel is based primarily on the reconstitution of the panel to comprise the vice-chairperson who sat on the panel that considered the duty of fair representation complaint, and allegedly relied on facts not in the record. As already stated, the reconsideration panel considered and rejected this allegation, and we agree with its determination of fact. We also see no merit in Mr. Rana's further, and contradictory, bias and procedural unfairness allegation based on the Board's not assigning to the reconsideration application the same three-person panel that dealt with the original complaint. This would have been impossible in any event once one of the panel members recused himself.

[15] For these reasons, we will dismiss the application with costs.

“J.B. Laskin”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-473-19

**STYLE OF CAUSE:** TARIQ RANA v. TEAMSTERS  
LOCAL UNION NO. 938

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

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

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