Federal Court of Appeal | Cour d'appel fédérale

Date: 20210510

Docket: A-444-19

Citation: 2021 FCA 90

CORAM: **NADON J.A.**
STRATAS J.A.
RIVOALEN J.A.

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online video conference hosted by the Registry on May 10, 2021.
Judgment delivered from the Bench at Ottawa, Ontario, on May 10, 2021.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on May 10, 2021).

STRATAS J.A.

[1] Before the Court is an application for judicial review of a decision of the Federal Public Sector Labour Relations and Employment Board: 2019 FPSLREB 106.

[2] The application for judicial review will be dismissed for mootness.

[3] The union, the Public Service Alliance of Canada, brought a policy grievance to the Board. It alleged the employer, Treasury Board, was in breach of the collective agreement by not providing paper copies of the collective agreement to some employees.

[4] Before the Board heard the grievance, the employer accepted it. It advised certain departments to print and distribute copies of the collective agreements. The employer brought a motion to the Board to dismiss the grievance for mootness. The Board granted the motion.

[5] In this application for judicial review, the union seeks to quash the Board's decision for unreasonableness. In our view, this application is moot and should not be heard.

[6] An issue is moot if the tangible and concrete dispute between the parties has disappeared and the issue has become academic: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, 57 D.L.R. (4th) 231 at 353 S.C.R. Mootness in judicial reviews has assumed new prominence in light of the recent encouragement given to reviewing courts to avoid needless hearings: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 at paras. 139-142; see *Canadian Union of Public Employees (Air Canada Component) v. Air Canada*, 2021 FCA 67 at para. 14.

[7] This application is moot for two reasons. First, the grievance and the corrective action requested in it have been accepted by the employer; there is no longer any dispute to adjudicate. And second, the collective agreement under which this grievance is brought expired in June,

2018 and “will soon be replaced by a new agreement”, if it has not already been replaced: Board decision at para. 31.

[8] The union says the application is not moot because it wants a declaration that the Treasury Board breached the collective agreement. But a mere declaration would not have any practical effects in this case. At best, it has a mere jurisprudential interest and that does not meet the threshold of a tangible and concrete dispute: *Canada (National Revenue) v. McNally*, 2015 FCA 248, 477 N.R. 389; *Canadian Union of Public Employees (Air Canada Component)*, above. In fact, before the Board, the union submitted this case was not a precedent with broader effect: Board decision at para. 20.

[9] The union also says the grievance is not moot because the Treasury Board’s corrective action has been insufficient. The union says some of its members had not received their printed agreements at the time of the Board hearing. This is of no moment. The union brought a grievance, and the employer accepted that grievance. Recourses are available for any failure by the employer to abide by its acceptance of the grievance, such as a new grievance based on continued or additional failure to provide copies of the collective agreement.

[10] This is not a case where the Court should exercise its discretion to decide the moot issue. Deciding the issue would be a waste of judicial resources and impermissible law-making in the abstract: *Borowski*; see also *Canadian Union of Public Employees (Air Canada Component)* at para. 9, citing *Amgen Canada Inc. v. Apotex Inc.*, 2016 FCA 196, 487 N.R. 202 at para. 16.

[11] Although we will dismiss the appeal for mootness, we wish to express our view that the Board, in its decision, should have stuck to the issue of the circulation of the collective agreement and should not wandered into a broader discussion of issues concerning the environment. We all have personal views about various issues of the day. But while we are deciding cases, we must cast those aside and stick to the task at hand, namely the task our governing statutes have assigned to us. Here, the Board's mandate had nothing to do with broader environmental issues. As well, it could not amend the requirements set out in the collective agreement. However, its foray into that area was of no moment: it had no practical effect upon its decision.

[12] Despite the able argument of Mr. Yazbeck, the application will be dismissed. As agreed by the parties, no order for costs will be made.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-444-19

JUDICIAL REVIEW OF THE DECISION OF THE FEDERAL PUBLIC SECTOR LABOUR RELATIONS AND EMPLOYMENT BOARD, DATED NOVEMBER 1, 2019, FILE NO. 569-02-228

DOCKET:	A-444-19
STYLE OF CAUSE:	PUBLIC SERVICE ALLIANCE OF CANADA v. ATTORNEY GENERAL OF CANADA
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DELIVERED FROM THE BENCH BY:	STRATAS J.A.

APPEARANCES:

David Yazbeck	FOR THE APPLICANT
Stefan Kimpton	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raven, Cameron, Ballantyne & Yazbeck LLP/s.r.l. Ottawa, Ontario	FOR THE APPLICANT
Nathalie G. Drouin Deputy Attorney General of Canada	FOR THE RESPONDENT