

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210526

Docket: A-108-20

Citation: 2021 FCA 99

[ENGLISH TRANSLATION]

**CORAM: BOIVIN J.A.
DE MONTIGNY J.A.
LOCKE J.A.**

BETWEEN:

RÉGIS BENIEY

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Heard by online videoconference organized by the registry on May 20, 2021.

Judgment delivered at Ottawa, Ontario, on May 26, 2021.

REASONS FOR JUDGMENT BY:

LOCKE J.A.

CONCURRED IN BY:

**BOIVIN J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

LOCKE J.A.

[1] The applicant, Régis Beniey, is a former employee of the Canada Border Services Agency (CBSA) who lost his job in 2017. Following the incident that he alleges led to his dismissal, he filed a grievance. To support that grievance, Mr. Beniey attempted to obtain a number of video recordings by submitting an access to information request to the CBSA.

[2] In response to Mr. Beniey's request, the CBSA provided him with some of the requested video recordings, but a portion of the content had been redacted. Dissatisfied with the recordings he received, Mr. Beniey filed a complaint with the Office of the Information Commissioner of Canada in March 2018. His complaint was dismissed in December 2018. Mr. Beniey subsequently contacted his union—which is the respondent in this case, the Public Service Alliance of Canada (PSAC)—to obtain its support in filing an application for judicial review with the Federal Court of that decision.

[3] However, Mr. Beniey was unable to reach an agreement with PSAC. He then hired a lawyer to file a notice of application with the Federal Court on his behalf, which was done on Friday, January 25, 2019. Three days later, PSAC filed a second notice of application with the Federal Court in Mr. Beniey's name, supposedly without his knowledge or consent. Stating that he was of the opinion that PSAC had made an error of law in its notice of application, Mr. Beniey asked PSAC to withdraw its application and to reimburse him for the legal costs associated with his own application. PSAC agreed to Mr. Beniey's request to withdraw the application for judicial review it had filed in his name, but it clearly specified that it would not reimburse him for the cost of the lawyer he had retained himself.

[4] Following those developments, Mr. Beniey filed a complaint against PSAC in April 2019 with the Federal Public Sector Labour Relations and Employment Board (the Board). In the complaint, which was filed under paragraph 190(1)(g) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, it is alleged that PSAC committed an unfair labour practice with respect to its representation of Mr. Beniey, and, more specifically, that PSAC had acted "in a

manner that is arbitrary or discriminatory or that is in bad faith”. Mr. Beniey criticizes PSAC for having acted in a manner that is contrary to its directives and for having disregarded his rights. Mr. Beniey argues that PSAC used his personal and confidential information without his authorization by filing the second application for judicial review, knowing that he had already filed his own application with the Federal Court.

[5] In March 2020, the Board dismissed that complaint in a decision with extensive reasons, on the ground that Mr. Beniey had not presented an arguable case that PSAC had acted toward him in a manner that was arbitrary or discriminatory or that was in bad faith. It is that decision by the Board that Mr. Beniey is appealing.

[6] Mr. Beniey accepts that the standard of review that applies in this appeal is reasonableness. He alleges that the impugned decision is unreasonable on the following grounds:

- A. the Board did not dispose of the issue that was before it;
- B. the Board should have required PSAC to produce the documents Mr. Beniey requested;
- C. the Board should have given Mr. Beniey an opportunity to cross-examine PSAC’s witnesses;
- D. the Board considered evidence to which Mr. Beniey never had access;
- E. the Board made findings on Mr. Beniey’s credibility without giving him a chance to respond to the arguments made in this regard; and
- F. the Board acted in a biased manner toward Mr. Beniey.

[7] Despite Mr. Beniey's very able arguments, I find that none of the grounds he raises hold water.

[8] The Board acknowledged that it had to consider the facts alleged by Mr. Beniey to be true, but noted that this requirement did not oblige it to accept his arguments. Furthermore, the Board noted that the limits of the duty of fair representation are described in *Mangat v. Public Service Alliance of Canada*, 2010 PSLRB 52. In particular, the Board indicated that it must "determine whether a bargaining agent acted in bad faith or in a manner that was arbitrary or discriminatory in its representation of the complainant." It "does not determine whether the bargaining agent's decisions on whether to represent or how to represent were correct."

[9] Mr. Beniey does not seem to be arguing that the Board erred in its description of the applicable law. Rather, he is asking us to deduce from the documents in the record that it was unreasonable for the Board to find that the evidence was insufficient to support an arguable case. To succeed, the applicant must satisfy us that PSAC acted in bad faith in filing its notice of application in January 2019. The applicant has not satisfied me of the merits of his position, much less of the unreasonableness of the Board's findings in this regard. As the Board states, the filing of the two applications for judicial review appeared to be the result of miscommunication and of PSAC's desire to respect the time limit for initiating a judicial review.

[10] I am not of the view that the Board erred by not disposing of all of the issues that Mr. Beniey claims to be relevant. The Board correctly identified the issue that was relevant to the complaint before it (the existence of arbitrary, discriminatory or bad faith conduct) and arrived at

a reasonable conclusion. Mr. Beniey has not convinced me that the documents underlying his application were pertinent. Furthermore, I am not satisfied that cross-examining the PSAC witnesses would have provided relevant information.

[11] I am also unconvinced that the Board considered evidence to which Mr. Beniey did not have access. In this regard, Mr. Beniey is asking us to draw conclusions based on inferences that I do not accept. I also find that Mr. Beniey's argument that his credibility was at issue before the Board cannot stand. The examples he cites in support of his argument are not compelling. Consequently, I cannot find that the Board acted in a biased manner.

[12] For these reasons, I would dismiss this application for judicial review, with costs.

“George R. Locke”

J.A.

“I agree.

Richard Boivin J.A.”

“I agree.

Yves de Montigny J.A.”

Certified true translation
Melissa Paquette, Jurilinguist

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-108-20

STYLE OF CAUSE: RÉGIS BENIEY v. PUBLIC
SERVICE ALLIANCE OF
CANADA

PLACE OF HEARING: BY ONLINE
VIDEOCONFERENCE

DATE OF HEARING: MAY 20, 2021

REASONS FOR JUDGMENT BY: LOCKE J.A.

CONCURRED IN BY: BOIVIN J.A.
DE MONTIGNY J.A.

DATED: MAY 26, 2021

APPEARANCES:

Régis Beniey FOR THE APPLICANT
(Representing himself)

Daria A. Strachan FOR THE RESPONDENT

SOLICITORS OF RECORD:

SHIELDS HUNT DUFF STRACHAN FOR THE RESPONDENT
Ottawa, Ontario