

Federal Court of Appeal



Cour d'appel fédérale

Date: 20231221

Docket: A-57-22

Citation: 2023 FCA 251

**CORAM: GLEASON J.A.
LEBLANC J.A.
HECKMAN J.A.**

BETWEEN:

MICHAEL DAVID SIELUZYCKI

Applicant

and

**COCA-COLA CANADA BOTTLING
LIMITED and UNITED FOOD AND
COMMERCIAL WORKERS
INTERNATIONAL UNION LOCAL 175**

Respondents

Heard at Montréal, Quebec, on December 19, 2023.
Judgment delivered at Ottawa, Ontario, on December 21, 2023.

**REASONS FOR JUDGMENT BY:
CONCURRED IN BY:**

**GLEASON J.A.
LEBLANC J.A.
HECKMAN J.A.**

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REASONS FOR JUDGMENT

GLEASON J.A.

[1] The applicant seeks to set aside the letter decision of the Canada Industrial Relations Board (CIRB) issued November 17, 2021 in 2021 CIRB LD 4591. In that decision, a Vice-Chairperson of the CIRB dismissed a reconsideration application that sought to set aside the refusal of the CIRB's Registrar to process the applicant's duty of fair representation and unfair

labour practice complaints. Both the Registrar and the Vice-Chairperson concluded that the CIRB had no jurisdiction over the applicant's complaints, which arose from circumstances surrounding the applicant's job applications for position(s) with the Coca-Cola Bottling Company, Canada (Coca-Cola).

[2] I see no reviewable error in the CIRB's conclusion that it lacked jurisdiction. The labour relations of Coca-Cola do not fall within the competence of Parliament but are rather subject to provincial regulation.

[3] Labour relations in most industries are a matter of provincial competence, as the Judicial Committee of the Privy Council confirmed nearly a hundred years ago in what has been called the Labour Conventions case, *Canada (AG) v. Ontario (AG)* [1937] UKPC 6, [1937] A.C. 326.

[4] By way of exception, Parliament has jurisdiction over the labour relations of employees who work in federal works, undertakings, or businesses, as the Supreme Court of Canada confirmed in the case commonly known as the Stevedoring Reference, *Validity and Applicability of the Industrial Relations and Disputes Investigation Act*, 1955 CanLII 1 (SCC), [1955] SCR 529.

[5] *The Constitution Act, 1867*, 30 & 31 Vict., c. 3 governs which works, undertakings, or businesses are federal in nature. Section 2 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the Code) provides a useful listing of those works, undertakings, or businesses that are subject to federal regulation. Section 2 defines a federal work, undertaking, or business as meaning:

federal work, undertaking or business means any work, undertaking or business that is within the legislative authority of Parliament, including, without restricting the generality of the foregoing,

(a) a work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada,

(b) a railway, canal, telegraph or other work or undertaking connecting any province with any other province, or extending beyond the limits of a province,

(c) a line of ships connecting a province with any other province, or extending beyond the limits of a province,

(d) a ferry between any province and any other province or between any province and any country other than Canada,

(e) aerodromes, aircraft or a line of air transportation,

(f) a radio broadcasting station,

(g) a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*,

(h) a work or undertaking that, although wholly situated within a

entreprises fédérales Les installations, ouvrages, entreprises ou secteurs d'activité qui relèvent de la compétence législative du Parlement, notamment :

a) ceux qui se rapportent à la navigation et aux transports par eau, entre autres à ce qui touche l'exploitation de navires et le transport par navire partout au Canada;

b) les installations ou ouvrages, entre autres, chemins de fer, canaux ou liaisons télégraphiques, reliant une province à une ou plusieurs autres, ou débordant les limites d'une province, et les entreprises correspondantes;

c) les lignes de transport par bateaux à vapeur ou autres navires, reliant une province à une ou plusieurs autres, ou débordant les limites d'une province;

d) les passages par eaux entre deux provinces ou entre une province et un pays étranger;

e) les aéroports, aéronefs ou lignes de transport aérien;

f) les stations de radiodiffusion;

g) les banques et les banques étrangères autorisées, au sens de l'article 2 de la *Loi sur les banques*;

h) les ouvrages ou entreprises qui, bien qu'entièrement situés dans

province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more of the provinces,

(i) a work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces, and

(j) a work, undertaking or activity in respect of which federal laws within the meaning of section 2 of the *Oceans Act* apply pursuant to section 20 of that Act and any regulations made pursuant to paragraph 26(1)(k) of that Act; (*entreprises fédérales*)

une province, sont, avant ou après leur réalisation, déclarés par le Parlement être à l'avantage général du Canada ou de plusieurs provinces;

i) les installations, ouvrages, entreprises ou secteurs d'activité ne ressortissant pas au pouvoir législatif exclusif des législatures provinciales;

j) les entreprises auxquelles les lois fédérales, au sens de l'article 2 de la *Loi sur les océans*, s'appliquent en vertu de l'article 20 de cette loi et des règlements d'application de l'alinéa 26(1)k) de la même loi. (*federal work, undertaking or business*)

[6] It is the nature of the employer's core business that is considered in characterizing its business or undertaking for constitutional purposes: *Canadian Pacific Railway Co. v. Attorney-General of British Columbia*, 1948 CanLII 18 (SCC), [1948] SCR 373. Thus, the fact that a manufacturing business employs a driver who makes deliveries outside the province does not transform the undertaking into a federal one.

[7] The contents of any collective agreement applicable to an employer and its employees is not relevant to determining whether the Code applies to them. It is rather the nature of the employer's core business that governs. Thus, contrary to what the applicant submitted, it is not necessary to review the collective agreement applicable to the respondents to determine if the CIRB had jurisdiction over the applicant's complaints.

[8] Nor do the *Motor Vehicle Operators Hours of Work Regulations*, C.R.C., c. 990 provide a basis for federal jurisdiction in this case. As explained to the applicant during the hearing, those regulations only apply to drivers whose employers are subject to federal regulation, such as interprovincial transportation companies. There are provincial regulations and legislation that apply to drivers who are employed by businesses, like Coca-Cola, whose labour relations are subject to provincial regulation.

[9] Thus, the CIRB did not err in finding it had no jurisdiction over the applicant's complaints. I would accordingly dismiss this application.

"Mary J.L. Gleason"

J.A.

"I agree.
René LeBlanc J.A."

"I agree.
Gerald Heckman J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-57-22

STYLE OF CAUSE: MICHAEL DAVID SIELUZYCKI
v. COCA-COLA CANADA
BOTTLING LIMITED AND
UNITED FOOD and
COMMERCIAL WORKERS
INTERNATIONAL UNION
LOCAL 175

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: DECEMBER 19, 2023

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: LEBLANC J.A.
HECKMAN J.A.

DATED: DECEMBER 21, 2023

APPEARANCES:

Michael David Sieluzycki ON HIS OWN BEHALF

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