

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140213

Docket: A-175-13

Citation: 2014 FCA 41

**CORAM: DAWSON J.A.
GAUTHIER J.A.
NEAR J.A.**

BETWEEN:

KENNY ROBERTS

Applicant

and

**UNION OF CANADIAN CORRECTIONAL
OFFICERS**

Respondent

Heard at Ottawa, Ontario, on February 11, 2014.

Judgment delivered at Ottawa, Ontario, on February 13, 2014.

REASONS FOR JUDGMENT BY:

DAWSON J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
NEAR J.A.**

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REASONS FOR JUDGMENT

DAWSON J.A.

[1] This is an application for judicial review of a decision of the Public Service Labour Relations Board rendered on December 10, 2010 (2010 PSLRB 129). In its decision the Board dismissed the remaining element of a complaint made by the applicant under paragraph 190(1)(g) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 (Act) alleging that the respondent Union breached its duty of fair representation. The Board previously dismissed the balance of the

applicant's complaint in a decision rendered August 31, 2010 (2010 PSLRB 96, the "first decision"). However, the Board reserved its decision on the applicant's final allegation so that the parties could file further written submissions on that issue. The issue raised in the final allegation related to the Union's failure to seek judicial review of an adjudicator's decision dismissing a grievance brought on the applicant's behalf following the termination of his employment.

[2] The first decision is the subject of a separate application for judicial review brought in Court File number A-188-13. The reasons disposing of that application for judicial review are cited as 2014 FCA 42.

[3] In support of his submission that the Union was obliged to seek judicial review of the adjudicator's decision, the applicant argued that:

- the applicant was not alerted on a timely basis to his right to commence an application for judicial review;
- the legal opinion provided to the applicant by the Union was not provided on a timely basis;
- because he did not obtain the legal opinion on a timely basis, the applicant was unable to respond within the remaining time and commence an application for judicial review;
- the judicial review processes is too complex to expect the applicant to address it on his own; and
- the Union failed to meet a "general duty" of fair representation.

[4] The Board considered and disposed of each of the applicant's allegations. It concluded that the Union's decision to discontinue representation beyond the grievance adjudication stage "was based on a comprehensive analysis of the legal issues involved and their application to the adjudicator's decision" (Board's reasons at paragraph 28).

[5] A decision of the Board concerning a bargaining agent's duty of fair representation is reviewed on the standard of reasonableness (*Boulos v. Public Service Alliance of Canada*, 2012 FCA 193, [2012] F.C.J. No. 832, at paragraph 4).

[6] On this application the applicant has failed to demonstrate that the Board's decision was unreasonable in any respect.

[7] In the alternative, the applicant argued that he was denied a full oral hearing, and this violated the doctrine of equity and unspecified provisions of the *Charter of Rights and Freedoms* and the *Canadian Human Rights Act*.

[8] This argument must fail because the applicant was afforded a full oral hearing that led to the first decision. The first decision then allowed the applicant to make additional written submissions because he had failed to sufficiently address evidence or arguments on the issue of judicial review at the oral hearing. The Board essentially gave the applicant a second chance to make his case and the applicant has failed to establish that fairness required the second chance to take the form of a further oral hearing.

[9] Finally, for completeness, I note that at the hearing of this application the applicant withdrew his argument that subsection 190(2) of the Act should be struck down on Charter grounds. This argument was withdrawn because the applicant failed to serve any notice as required by section 57 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[10] For these reasons, I would dismiss the application for judicial review. Because no additional memorandum of fact and law was filed by the respondent on this application, I would dismiss the application without costs.

“Eleanor R. Dawson”

J.A.

“I agree.

Johanne Gauthier J.A.”

“I agree.

D.G. Near J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-175-13

STYLE OF CAUSE: KENNY ROBERTS v. UNION OF
CANADIAN CORRECTIONAL
OFFICERS

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: FEBRUARY 11, 2014

REASONS FOR JUDGMENT BY: DAWSON J.A.

CONCURRED IN BY: GAUTHIER
J.A.
NEAR J.A.

DATED: FEBRUARY 13, 2014

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