

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141125

Docket: A-164-14

Citation: 2014 FCA 274

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

BETWEEN:

TIPPET-RICHARDSON LIMITED

Appellant

and

GERARD LOBBE

Respondent

Heard at Toronto, Ontario, on November 25, 2014.

Judgment delivered from the Bench at Toronto, Ontario, on November 25, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on November 25, 2014)

DAWSON J.A.

[1] For reasons cited as 2013 FC 1258, [2013] F.C.J. No. 1403, a judge of the Federal Court dismissed an application for judicial review of a decision of an adjudicator appointed under the *Canada Labour Code*, R.S.C. 1985, c. L-2. The adjudicator found that Mr. Lobbe was unjustly

dismissed by his employer Tippet-Richardson Limited. This is an appeal from the decision of the Federal Court. At the hearing of the appeal the cross-appeal was abandoned.

[2] A single issue is raised on this appeal: did the Judge err by failing to determine whether the adjudicator's alleged reliance, without full submissions, on the presence at the hearing of Tippet-Richardson's President, Mr. Novak, as a factor that improperly influenced Tippet-Richardson's witnesses?

[3] The passage in the adjudicator's reasons that gives rise to this appeal is:

[4] The Respondent took the lead and called its evidence first. TRL president John Novak gave contextual evidence about the evolution of TRL as a full service moving company, now in its seventh decade in Ottawa, and then stayed on as client for the balance of the hearing. His presence seemed to send a strong message to all giving testimony as to its importance, and to his interest and commitment. A large number of TRL's employees have been with the company for many years. Sentiments of commitment and loyalty to the company came through strongly in the *viva voce* evidence.

[4] In our view, the appeal must fail on the basis of the Judge's finding that there was "no suggestion in the adjudicator's reasons that any of the witnesses' testimony was negatively affected by Mr. Novak's continued presence in the hearing room or was accorded any less probative value as a result" (reasons, at paragraph 57). We agree. The adjudicator provided cogent reasons for preferring the testimony of Mr. Lobbe over the evidence of Tippet-Richardson's witnesses. Because the Judge found that the adjudicator's appreciation of the evidence was not influenced by Mr. Novak's presence, the Judge did not err by failing to consider whether the adjudicator acted outside her jurisdiction by considering Mr. Novak's presence in the manner alleged or whether the adjudicator erred by failing to afford Tippet-

Richardson the opportunity to address the adjudicator's alleged view of the impact of Mr. Novak's presence. Put simply, there is no evidentiary basis to support either alleged error.

[5] For these reasons the appeal will be dismissed. There is no reason to depart from the general principle that costs follow the event.

“Eleanor R. Dawson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-164-14

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE
MACTAVISH OF THE FEDERAL COURT DATED DECEMBER 18, 2013 IN DOCKET
NO. T-2215-12.**

STYLE OF CAUSE: TIPPET-RICHARDSON LIMITED
v. GERARD LOBBE

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 25, 2014

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

DELIVERED FROM THE BENCH BY: DAWSON J.A.

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