Federal Court of Appeal | Cour d'appel fédérale

Date: 20220915

Docket: A-210-21

Citation: 2022 FCA 155

CORAM: **LOCKE J.A.**
MACTAVISH J.A.
MONAGHAN J.A.

BETWEEN:

CANADIAN MERCHANT SERVICE GUILD

Applicant

and

ALGOMA CENTRAL CORPORATION, ALGOMA GREAT LAKES SHIPPING INC., SEAFARERS' INTERNATIONAL UNION OF CANADA and UNIFOR

Respondents

Heard by online video conference hosted by the Registry on September 15, 2022.

Judgment delivered from the Bench at Ottawa, Ontario, on September 15, 2022.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on September 15, 2022).

MACTAVISH J.A.

[1] The Canadian Merchant Service Guild seeks judicial review of a decision of the Canada Industrial Relations Board reconsidering an earlier Board decision, and of the earlier decision itself.

[2] In a decision dated May 12, 2020 (the original decision), the Board dismissed a joint application brought by the Guild and the respondent, Algoma Central Corporation (ACC), under sections 18.1 and 45 of the *Canada Labour Code*, R.S.C. 1985, c. L-2. These parties sought to merge four existing bargaining units into two, classification-specific bargaining units that included employees of ACC and Algoma Great Lakes Shipping Inc. In a subsequent decision rendered on July 14, 2021 (the reconsideration decision), the Board refused the Guild's request that it reconsider the original decision.

[3] The Guild submits that both the original decision and the reconsideration decision were tainted by reviewable errors.

[4] It is not necessary to engage in a lengthy standard of review analysis in this case. The Guild's position is that the Board's original decision incorrectly held that no provision of the *Code* authorized it to certify a multi-employer bargaining unit. However, even if the Board erred in this regard in the initial decision, this error was corrected in the reconsideration decision. There, the Board expressly noted that sections 33, 34 and 35 of the *Code* permit it to issue certificates to multi-employer bargaining units in certain specified situations. The Board then reasonably found that the requirements of each of these sections had not been satisfied in this case, and that it thus did not have the power to issue the multi-employer bargaining certificates sought by the Guild and ACC. We have not been persuaded that the Board erred in this regard.

[5] Second, the Guild submits that the Board's original decision was unreasonable as a result of its failure to consider the application of section 45 of the *Code*, which permits the review of

bargaining units where there has been the sale of a business or a change in activity. However, as was noted in the reconsideration decision, a review of the original decision does not support this argument. The Board expressly referenced the parties' arguments with respect to section 45 of the *Code* in the original decision, clearly understanding what was being argued by the Guild and the ACC. The Board chose instead to base its decision on a different question – namely the power of the Board to grant the relief sought. The Guild's section 45 argument was subsequently addressed more fulsomely in the Board's reconsideration decision, but once again was not a basis for the Board's decision.

[6] Third, the Guild contends that the Board erroneously conflated sections 18.1 and 45 of the *Code* in its analysis, rather than considering each provision separately. Section 18.1 of the *Code* permits the Board to review the structure of bargaining units if it is satisfied that the bargaining units are no longer appropriate for collective bargaining. The Guild contends that this was a critical error, as it says that section 45 of the *Code* imposes a lower threshold that has to be met for the Board to review the structure of bargaining units than does section 18.1.

[7] We are not persuaded that the Board erred in this regard. Moreover, and in any event, as the Board noted in its reconsideration decision, the original decision was not based on a determination as to whether the applicable threshold had been met. It was based on the Board's finding that it did not have the authority to issue a single certification order covering the employees of two distinct employers in the circumstances of this case – a finding with which the Board agreed in reconsidering the original decision.

[8] Fourth, the Guild argues that the Board unreasonably refused to grant the order sought on the consent of the parties, based on the submissions of the non-party interveners, the Seafarer's International Union and Unifor. It is true that, as a matter of labour relations policy, effect will ordinarily be given to agreements negotiated between the parties, and parties are encouraged to resolve their differences amicably - a value that is reflected in the *Code* itself. That said, the Board must nevertheless satisfy itself that it has the statutory authority necessary to grant the relief sought, and jurisdiction cannot be conferred on judicial or quasi-judicial bodies by the agreement of the parties: see, for example, *Hillier v. Canada (Attorney General)*, 2019 FCA 44 at para. 4; *Pfizer Canada Inc. v. Teva Canada Limited*, 2016 FCA 218 at paras. 6-7.

[9] Finally, we do not accept the Guild's contention that the Board's refusal to reconsider its original decision was unreasonable. The Board clearly identified each of the arguments advanced by the Guild and explained why it was not persuaded by these arguments. Its analysis was thus responsive to the Guild's submissions, and was justified, transparent and intelligible, thereby satisfying the requirements of a reasonable decision set out by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[10] Consequently, the Guild's application for judicial review is dismissed, with costs.

"Anne L. Mactavish"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-210-21
STYLE OF CAUSE:	CANADIAN MERCHANT SERVICE GUILD v. ALGOMA CENTRAL CORPORATION, ALGOMA GREAT LAKES SHIPPING INC., SEAFARERS' INTERNATIONAL UNION OF CANADA and UNIFOR
PLACE OF HEARING:	Ottawa, Ontario
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DELIVERED FROM THE BENCH BY:	MACTAVISH J.A.

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