Federal Court of Appeal | Cour d'appel fédérale

Date: 20230524

Docket: A-122-21

Citation: 2023 FCA 110

CORAM: **RIVOALEN J.A.**
ROUSSEL J.A.
GOYETTE J.A.

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA

Applicant

and

HOUSE OF COMMONS

Respondent

Heard at Ottawa, Ontario, on May 16, 2023.

Judgment delivered at Ottawa, Ontario, on May 24, 2023.

REASONS FOR JUDGMENT BY: RIVOALEN J.A.

CONCURRED IN BY: ROUSSEL J.A.
GOYETTE J.A.

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REASONS FOR JUDGMENT

RIVOALEN J.A.

[1] This is an application for judicial review of the arbitral award rendered on April 21, 2021 (2021 FPSLREB 45) by the Federal Public Sector Labour Relations and Employment Board (the Board) established pursuant to section 50 of the *Parliamentary Employment and Staff Relations Act*, R.S.C. 1985, c. 33 (2nd Supp) (the Act).

[2] In its decision, the Board rejected the applicant's proposal seeking a new appendix to the collective agreement between the employees of the House of Commons in the Reporting Sub-Group and Text Processing Sub-Group (the bargaining unit) and the House of Commons. The proposal consisted of a Memorandum of Understanding that included a lump sum payment of $2,500 to each member of the bargaining unit for general damages to compensate for the stress, aggravation, and pain and suffering experienced related to the employer's implementation of the Phoenix pay system. The applicant justified the proposal in an attempt to mirror an agreement between tens of thousands of employees from the core public administration and the Treasury Board (2020 Phoenix settlement agreement).

[3] The parties agree that the standard of review of the Board's decision is reasonableness. The question before the Court is whether the arbitral award was reasonable within the meaning of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 [*Vavilov*].

[4] The applicant submits that the arbitral award is unreasonable and must be set aside. The applicant says that the Board rejected its proposal for the lump sum payment of $2,500 on the erroneous basis that it was not convinced that the implementation issues experienced by members employed by the House of Commons were sufficiently widespread to justify an award of damages when compared to the issues experienced by the employees of the core public administration.

[5] The applicant argues that the arbitral award is based on a flawed premise that proof of stress, aggravation, or pain and suffering caused by the Phoenix pay system is required and is unreasonable for this reason. In particular, the applicant submits that the Board failed to grasp the distinction that, in the 2020 Phoenix settlement agreement, there was no requirement for the applicant's members to provide evidence of stress, aggravation, or pain and suffering related to a specific Phoenix-related pay problem in order to receive general damages of $2,500. The applicant's rationale is that being under the Phoenix pay system is sufficient to establish the evidence of stress based on the potential for serious pay problems. As it did before the Board, the applicant also points to the example of employees working for the Canada Revenue Agency (CRA), who were under the Phoenix pay system, having received the lump sum payment of $2,500 without having experienced any Phoenix-related pay problems. The applicant further argues that, in its analysis on this point, the Board improperly treated general damages as if they were part of total compensation.

[6] I am of the view that the applicant's arguments cannot stand. I see no basis to conclude that the Board's decision was unreasonable.

[7] Under the judicial review framework set out in *Vavilov*, a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para. 85). The burden is on the party challenging a decision to show that it is unreasonable, a conclusion that requires showing that the decision contains a serious flaw. In addition, the reviewing court must refrain from reweighing and reassessing the evidence considered by the decision maker. Reviewing courts

must also ordinarily refrain from deciding the issue that was before the decision maker and must respect the decision maker's role and expertise (*Vavilov* at paras. 75, 83, 100, 125).

[8] The Board, in this case, had wide authority—under the interest arbitration process—to resolve matters referred to it, determine the appropriate terms and conditions of employment, and impose those terms via a binding award. This Court has recognized that interest arbitrators are afforded wide discretion to settle the terms of the parties' collective agreement, and the decisions they make are almost always policy determinations and rarely involve legal issues. Additionally, this Court has recognized that the need for finality, which animates the need for deference in labour cases generally, is particularly acute in interest arbitration cases (*Laurentian Pilotage Authority v. Pilotes du Saint-Laurent Central Inc.*, 2018 FCA 117, 299 A.C.W.S. (3d) 235 at paras. 60–61, 63).

[9] As its reasons disclose, the Board took into account the factors set out in section 53 of the Act. It weighed the evidence and considered the proposals made by the parties. At paragraphs 75 to 83 of its reasons, the Board set out a coherent and rational basis for its decision to reject the proposal for a lump sum payment of $2,500 to each member of the bargaining unit. Weighing all considerations, the Board was not prepared to establish the precedent of matching the 2020 Phoenix settlement agreement in the arbitral award and did not accept that matching a damage award designed to compensate employees for the specific problems that occurred in the Treasury Board's jurisdiction was justified by a comparability argument without having clearer evidence that problems of similar or substantial extent occurred at the House of Commons.

[10] Similarly, the Board was not convinced by the situation of the employees of the CRA who were entitled to the lump sum. The Board noted, at paragraph 77 of its reasons, that the CRA employees received a smaller general economic increase in the third and fourth years of their collective agreement than that awarded by the Board in its arbitral decision. It was within the Board's ambit to consider total compensation in conducting its comparability analysis with respect to the CRA employees.

[11] Turning specifically to the evidence on the record, I note that the evidence submitted by the applicant before the Board consisted of a sample of four employees of the bargaining unit (out of a total of 62) who experienced pay issues during the Phoenix implementation. There was no evidence to substantiate that members suffered stress, aggravation, or pain and suffering because of pay-related issues.

[12] In response, the evidence submitted by the respondent before the Board was that it implemented efficient and flexible mechanisms to mitigate against any negative impacts the Phoenix pay system caused to its employees. In addition, the respondent offered extensive reasons for opposing the lump sum payment proposal. It outlined the history of the Phoenix implementation in the core public administration and provided reasons why that history differed considerably from that experienced by employees of the House of Commons. Also, of the four samples provided by the applicant, three were not related to Phoenix issues but were rather because of human error.

[13] As previously mentioned, the Board considered and weighed the proposals from both sides, as it was required to do. There was no evidence before it that any of the applicant's members working at the House of Commons had experienced stress, aggravation, or pain and suffering from Phoenix-related pay problems, let alone problems of similar or substantial extent to those experienced by the employees of the core public administration.

[14] Thus, I am of the view that the applicant has not met its burden to show that the Board's decision was unreasonable. I see no serious flaw in the Board's reasoning, based on the record that was before it and the positions taken by both parties in the arbitral dispute. The arbitral award is based on an internally coherent and rational chain of analysis that is justified in relation to the record and the Board's authority under the Act.

[15] The applicant is asking this Court to reweigh the evidence that was before the Board, which is not its role. I see no reason to intervene.

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

"Marianne Rivoalen"
J.A.

"I agree.
Sylvie E. Roussel J.A."

"I agree.
Nathalie Goyette J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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