

Federal Court of Appeal



Cour d'appel fédérale

Date: 20231005

Docket: A-59-22

Citation: 2023 FCA 205

**CORAM: STRATAS J.A.
LASKIN J.A.
ROUSSEL J.A.**

BETWEEN:

MORRIS KLOS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on October 5, 2023.

Judgment delivered from the Bench at Vancouver, British Columbia, on October 5, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on October 5, 2023).

STRATAS J.A.

[1] The applicant applies for judicial review of the decision dated March 3, 2022 of the Federal Public Sector Labour Relations and Employment Board: 2022 FPSLREB 11. The Board found that it did not have jurisdiction under s. 209(1)(b) of the *Federal Public Sector Labour*

Relations Act, S.C. 2003, c. 22, s. 2, over certain grievances the applicant placed before it. Under that legislative provision, the grievances had to concern “...a disciplinary action resulting in termination, demotion, suspension or financial penalty...”.

[2] The Board dismissed the applicant’s grievances. In its view, the grievances did not involve disciplinary action and, thus, could not be placed before the Board under s. 209(1)(b).

[3] The applicant attempted to place before this Court a number of materials that were not before the Board. These are inadmissible: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 N.R. 297. Had these materials been admissible, our judgment would remain the same.

[4] The applicant’s application will be dismissed with costs.

[5] The Board’s decision is reasonable within the meaning of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653. It is based on an acceptable and defensible view of the facts and law before it. Further, it has explained its decision in comprehensive and detailed reasons.

[6] The applicant alleges that the Board failed to observe the principles of natural justice and procedural fairness. We disagree. The Board announced that it intended to proceed by way of written submissions—an appropriate and fair manner of proceeding in a case such as this—and

gave the applicant at least two opportunities to make submissions. The applicant declined to do so.

[7] The applicant submits that s. 228(1) of the *Act*, which provides that the parties must have “an opportunity to be heard” means that the Board was obligated to give him an oral hearing. In many statutes such as this, such as section 16 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, “heard” means that submissions can be received in oral or written form. In this case, this is buttressed by section 22 of the *Federal Public Sector Labour Relations and Employment Board Act*, S.C. 2013, c. 40, s. 365, which specifically provides that the Board may decide any matter before it without holding an oral hearing, and also by an authority of this Court that binds us: *Boshra v. Canadian Association of Professional Employees*, 2011 FCA 98, 90 C.C.E.L. (3d) 89 at para. 14.

[8] The applicant also submits that the delay of the Board in this case constitutes an abuse of process. The applicant did not place this issue before the Board for consideration in his written submissions and, thus, it is a new issue in this Court that should not be heard: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654. We do not consider that the Supreme Court's recent willingness (in *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21) to decide a case on the basis of a new issue, one of international law, for the first time on the third level of appeal should be taken to undercut the longstanding, unquestioned authority of *Alberta Teachers' Association*. In any event, the threshold for success on such a point is very high and is not met here: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, 470 D.L.R. (4th) 328.

[9] Mr. Klos raises other matters with us, such as issues relating to the Charter, the *Canadian Bill of Rights*, S.C. 1960, c. 44, and the *Criminal Code*, R.S.C. 1985, c. C-46. These are irrelevant to the only issue before us today: the applicant’s application for judicial review of the Board’s March 3, 2022 decision, a decision that turned on the outcome of a relatively narrow issue arising under s. 209(1)(b) of the *Federal Public Sector Labour Relations Act*. The other matters of concern to the applicant might be able to be litigated in other places.

[10] Therefore, we will dismiss the application with costs.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-59-22

**APPEAL FROM A DECISION OF THE FEDERAL PUBLIC SECTOR LABOUR
RELATIONS AND EMPLOYMENT BOARD DATED MARCH 3, 2022, BOARD FILES
566-02-14185, 14700 AND 41704**

STYLE OF CAUSE:

MORRIS KLOS v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING:

VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING:

OCTOBER 5, 2023

**REASONS FOR JUDGMENT OF THE COURT
BY:**

STRATAS J.A.
LASKIN J.A.
ROUSSEL J.A.

DELIVERED FROM THE BENCH BY:

STRATAS J.A.

APPEARANCES:

Morris Klos

ON HIS OWN BEHALF

Marie-France Boyer

FOR THE RESPONDENT

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