IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Canadian Union of Public Employees, Local 7000 v. British Columbia (Labour Relations Board),* 2024 BCSC 55

Date: 20240112
Docket: S227915
Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

Canadian Union of Public Employees, Local 7000

Petitioner

And

British Columbia Labour Relations Board and British Columbia Rapid Transit Company Ltd.

Respondents

Corrected Judgment: The front page of the judgment was corrected and a change was made on January 23, 2024.

Before: The Honourable Justice Devlin

On judicial review from: A decision of the British Columbia Labour Relations Board dated August 3, 2022 (2022 BCLRB 84).

Reasons for Judgment

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Counsel for the Respondent British Columbia Rapid Transit Company Ltd.:	D.J. Jordan, K.C. K. Aniket, Articled Student
Place and Dates of Hearing:	Vancouver, B.C. November 6 and 7, 2023

Place and Date of Judgment:	Vancouver, B.C. January 12, 2024

Introduction

[1] The Canadian Union of Public Employees, Local 7000 (the "Union" or "Petitioner") brings a petition for judicial review of a decision of the British Columbia Labour Relations Board (the "Board") in *British Columbia Rapid Transit Company Ltd. and CUPE, Local 7000*, 2022 BCLRB 84 (Leave for Reconsideration of 2021 BCLRB 185) (the "Reconsideration Decision").

[2] The central issue in this judicial review petition is the Board's interpretation of s. 54 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244 [the *Code*], in determining that the mandatory vaccination policy (the "Policy") adopted by the British Columbia Rapid Transit Company Ltd. (the "Employer") did not trigger s. 54 of the *Code*. Accordingly, the Reconsideration Decision set aside the original decision and dismissed the Union's complaint alleging that the Employer breached s. 54 of the *Code*. The Union does not challenge the reasonableness or the merits of the Policy, but maintains it is a policy that "affects the terms, conditions or security of employment of a significant number of employees" as described in s. 54 of the *Code*, such that the process set out in s. 54 should have been engaged.

[3] The Union makes two principal arguments in support of their position. First, they submit the Board's decision is fundamentally flawed: it conflates the absence of jurisprudence regarding the application of s. 54 to workplace policies with confirmation that s. 54 did not apply to certain workplace policies. Secondly, the majority failed to engage in a proper statutory interpretation of s. 54, and their findings were therefore illogical. They submit these two analytical defects led to further errors in the decision. As a result, the Union submits, the Reconsideration Decision is patently unreasonable.

[4] The Respondent Employer acknowledges that the majority and the dissent in the Reconsideration Decision disagree on the scope of s. 54 of the *Code* in light of labour relations policy. However, they emphasize that the role of the court on this judicial review is not to resolve these different perspectives, but rather to determine if the Majority decision of the Board was patently unreasonable. They submit the

Reconsideration Decision sets out a rational line of reasoning in support of its conclusions; therefore, the Petition should be dismissed.

[5] The Respondent Board focused its submissions on the standard of review, emphasizing that patent unreasonableness is a highly deferential standard of review.

Background Facts

[6] There is no dispute among the parties regarding the relevant background facts. In setting out the facts, I have relied on the Petitioner's written submissions together with the Responses to Petition filed by the Employer and the Board.

[7] The British Columbia Rapid Transit Company Ltd. operates SkyTrain, a rapid transit system throughout Metro Vancouver that uses automated trains. The Petitioner is the certified bargaining agent for all employees of the company, totaling approximately 1000 members who are involved in all aspects of operating and maintaining the company's trains and systems. The Petitioner and the Employer are subject to a Collective Agreement with the term of September 1, 2019 to August 31, 2023.

[8] On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic. Subsequently, on March 18, 2020, a provincial state of emergency was declared in British Columbia. As a result of these developments, the Employer introduced enhanced safety precautions and procedures in the workplace but did not immediately require mandatory vaccination of all employees.

[9] On October 8, 2021, the Employer announced that it would be implementing a mandatory COVID-19 vaccination policy for all employees and contractors. The policy required that all employees be fully vaccinated by November 29, 2021, and to provide proof of their vaccination status to the Employer. Otherwise, employees would be deemed ineligible to work and could face potential employment consequences if they continued to remain unvaccinated. On October 21, 2021, the Employer implemented its BCRTC Safety Vaccination Policy (the "Policy").

[10] In response, on October 21, 2021, the Union asked to meet with the Employer to discuss the Policy. A meeting occurred on October 25, 2021, at which the Union expressed concern regarding the November 19, 2021 implementation date.

[11] The Union's request for the Employer to withdraw the Policy was denied. However, on October 28, 2021, the Employer emailed the Union, stating a willingness to further discuss the implementation and/or impact of the Policy.

[12] On October 29, 2021, the Petitioner filed a complaint with the Board alleging the Employer had breached s. 54 of the *Code* in implementing a COVID-19 mandatory vaccination policy. Section 54 of the *Code* provides that if an employer intends to introduce a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies, the employer must give 60 days' notice, following which the employer and the union must meet in an attempt to develop an adjustment plan which may include provisions respecting such things as alternatives to the proposed change, human resource planning, notice of termination, severance pay, and entitlement to pension and other benefits.

[13] On November 26, 2021, after receiving written response to the complaint from the Employer and a final reply from the Union, an original panel of the Board issued a decision granting the complaint in part. It found s. 54 of the *Code* applied to the Policy and that the Employer had breached the subsection 54(1)(a) requirement, but not the s. 54(1)(b) requirement (the "Original Decision").

[14] On December 16, 2021, the Employer applied under s. 141 of the *Code* for leave and reconsideration of the finding in the Original Decision that s. 54 applied to the Policy. On December 17, 2021, the Union applied under s. 141 of the *Code* for leave and reconsideration of the finding in the Original Decision that the Employer had not breached the requirement under s. 54(1)(b) of the *Code*.

[15] On August 3, 2022, a reconsideration panel of the Board issued a decision granting the Employer's application for reconsideration and dismissing the Union's application. The majority Reconsideration Decision set aside the Original Decision and dismissed the complaint on the basis that s. 54 of the *Code* did not apply to the introduction of the Policy. The majority decision was given by Chair Clougie and Vice-Chair Chesman, with Associate Chair Matthews issuing a dissent.

[16] The Petitioner seeks judicial review of the Reconsideration Decision.

Procedural History

The Original Decision

[17] On November 26, 2021, an original panel of the Board issued its decision. It found that s. 54 of the *Code* applied to the Policy and that the Employer had breached the subsection 54(1)(a) requirement, but not the s. 54(1)(b) requirement. The decision began with a review of the text and a consideration of the purpose of s. 54 with reference to previous decisions of the Board, including *University of British Columbia*, BCLRD No. B371/94, 26 C.L.R.B.R. (2d) 33.

[18] The Employer's position regarding the applicability of s. 54 was described as follows:

> 60 The Employer argues, in part, that Section 54 applies to organizational change as distinct from workplace policies which employees are required to follow subject to removal from the workplace or discipline. In this sense, the Employer asserts the Policy is akin to a requirement to wear personal protective equipment or abide by a bullying and harassment policy. It says in such cases the employees' own actions determine whether or not the policy will have any effect on their terms, conditions, or security of employment, and it cannot be said that the employer in such a case has introduced a Change "that affects" those things.
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> 61 The Employer's general position on the types of policies to which Section 54 does not apply has some support in the Board's jurisprudence, as no decisions suggest the implementation of a workplace policy, in itself, is sufficient to trigger the requirements of Section 54. Rather, the Board's decisions have generally focused on parties meeting to discuss adjustment plans to lessen the impact of employer determinations with respect to dismissals, layoffs, transfers, or other changes that affect the organization of the workforce. This is consistent with Section 54 notice having the purpose of allowing parties to avoid a Change or alter its impact by discussing such

> matters as job re-alignment, re-training, early retirement, job transfers, or even a union takeover of the operation (*UBC*, pp. 57-58).
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> [Emphasis added.]

[19] In finding that s. 54 did apply to the Policy, the Original Decision explained the basis for distinguishing the Policy from other workplace policies referenced by the Employer. The Board states:

> 65 …. The Policy is not directed towards individual behaviour assessed against a measure of expected performance, as is the case with a requirement to wear a piece of protective equipment or maintain certain standards of communication and professionalism in the workplace. Rather, the Policy requires employees to both undertake a form of medical procedure which the parties know some will be fundamentally opposed to, and to communicate confidential medical information to the Employer.
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> 66 The Policy also creates organizational changes in the workforce by temporarily and likely permanently removing those employees who do not meet a new requisite qualification in the form of "fully vaccinated" status. In this sense, unpaid leaves and dismissals are not merely the result of non-compliance with the Policy but are the purpose of the Policy by way of creating a new condition for continued employment within the context of the COVID-19 pandemic and removing those employees who do not meet it.
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> 67 The requirements of the Policy and the consequences for non-compliance are also rationally connected to all the Section 54(1)(b) provisions of a potential adjustment plan, including alternatives to the Policy, amendments to its requirements, notice requirements for non-compliant employees, and potential terms surrounding the separation of employment for non-compliant employees.

[20] In concluding that s. 54 did apply to the Policy, the Original Decision considered the factors listed above, together with the nature of the Policy and the purpose and requirements of s. 54 of the *Code*: at para. 71.

The Reconsideration Decision

[21] On August 3, 2022, a reconsideration panel of the Board issued the Reconsideration Decision. The reasons for the Board's decision were given by Chair Clougie and Vice-Chair Chesman (the "Majority"). A dissent was issued by Associate Chair Matthews (the "Dissent"). As stated earlier, both the Union and the Employer applied for reconsideration of the Original Decision pursuant to s. 141 of the *Code*.

[22] The Reconsideration Decision begins with the Majority's review of the Original Decision and the position of the parties. Before engaging in their analysis, the Majority first dealt with the leave applications. The issue to be determined on the leave application was whether an applicant has raised a serious question as to the correctness or fairness of the original decision. At paras. 42–44, the Majority set out the basis for granting the Employer's application for reconsideration and dismissing the Union's application. In granting the Employer leave for reconsideration, the Majority explained:

> 43. We find the Employer has raised a serious question with respect to the correctness of the original panel's conclusion that Section 54 applies to the Policy. As the Original Decision notes, "no [Board] decisions suggest the implementation of a workplace policy, in itself, is sufficient to trigger the requirements of Section 54" (para.61). As the Original Decision further notes, given the purpose of Section 54, it is "not surprising" that the provision has not been applied to "the types of workplace requirements to which the Employer compares the Policy" (para. 64).
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> 44. The Original Decision finds, however, that the Policy is "distinguishable from the types of policies cited by the Employer", that is, employer policies to which Section 54 does not apply (para. 65). For the following reasons, we find the Original Decision errs in this regard. We find the Employer has raised a serious question as to the correctness of this determination, and accordingly, leave for reconsideration on this ground is granted.

[23] After determining the preliminary issue of leave, the Majority proceeded with their analysis of the Employer's application. At paras. 45–47, the Majority set out the basis for their finding that the Policy is directed toward "individual employment behaviour", and that it is therefore the employees' own actions that determine whether or not the Policy will have an effect on their terms, conditions, or security of employment. With reference to the discussion at paras. 65–67 of the Original Decision, the Majority explained the basis for finding that the Policy is not distinguishable from other workplace polices:

> 45. In our view, the Policy is directed towards individual employment behaviour regarding COVID-19 vaccination, assessed against a measure of expected performance, namely, becoming "fully vaccinated," as defined in the Policy, by November 29, 2021. The Policy is therefore not distinguishable from other workplace policies on this basis, as suggested in paragraph 65 of the Original Decision.

> 46. Similarly, we find the Policy is not distinguishable from other workplace policies on the basis set out in paragraph 66 of the Original Decision. The introduction of any new workplace policy, rule or requirement could be described as creating "a new condition for continued employment", as the consequence for failing to meet the new rule or requirement (whether it be wearing a certain piece of safety equipment, attaining a vaccination status, or refraining from discriminatory and disrespectful workplace behaviour) may be discipline, up to and including dismissal. In that sense, any new workplace policy or requirement creates a new condition for continued employment, which may ultimately have the effect of removing those employees who do not meet it. Accordingly, we find the Policy is not distinguishable from other workplace policies on this basis.
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> 47 The Original Decision notes the Policy requires employees to "communicate confidential medical information to the Employer" (para. 65). However, other workplace policies may have such a requirement, including sick leave policies or attendance management policies. Such policies may require employees to communicate or disclose confidential medical information to their employer. The reasonableness of the requirement would be a matter for grievance arbitration. However, in our view, the fact that the Policy contains such a requirement does not distinguish it from a number of other kinds of workplace policies.

[24] The Majority noted that the Union's position was not that the inclusion of "policy" in s. 54 means "that all workplace policies therefore are subject to section 54". Rather, the Union submits there is "no reason it should not apply": at para. 49. At paras. 49–51, the Majority considered the Union's submission that it is the *importance* of the change to the group of employees that determines the application of the section. In explaining the basis for rejecting that proposition, the Majority stated:

> 49 The Union notes that the word "policy" appears in Section 54 ("a measure, policy, practice or change"), but it does not take the position that all workplace policies therefore are subject to Section 54. Rather, it submits that there is "no reason it should not apply" to an employer policy "in appropriate circumstances". The Union further submits that what determines the application of Section 54 is the <u>importance</u> of the change to the group of employees. It submits the Policy is important to the employees because it "touches on issues of bodily integrity, privacy, individual freedom, and medical choice". It says the "dividing line" between workplace changes that attract Section 54 and those that do not is "whether the change is of <u>such importance</u> to the group of employees that we would expect a level of consultation and collaboration between the Union and the Employer"
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> 50 We accept that the Policy seeks to compel employees to undergo COVID-19 vaccination, as well as to report their vaccination status to the Employer, and as such it touches on important issues of bodily integrity,

> privacy, individual freedom, and medical choice, as the Union asserts. However, we note that other workplace policies also touch on such issues. Sick leave and attendance management policies, for example, may require employees to report sensitive medical information or to undergo procedures such as independent medical examinations. Thus, we find the Policy is not unique in these regards; there are a range of other workplace policies that could also be regarded as important to employees for the same or similar reasons. Furthermore, as the Employer points out, workplace policies that prohibit discriminatory and disrespectful conduct are also important to employees, as are workplace safety policies. We accept, for example, that some employees may strongly oppose the imposition of gender neutral washrooms as part of a policy designed to recognize transgender identity rights. We do not believe that such opposition would cause such a policy to trigger Section 54 in the circumstances.
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> 51 In our view, therefore, neither the perceived importance of the Policy, nor the fact that some employees oppose it, meaningfully distinguishes the Policy from numerous other employer policies which could also be considered important or which some employees might also oppose.
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> [Emphasis added.]

[25] Having concluded that neither the perceived importance of the Policy, nor the fact that some employees oppose it, distinguishes the Policy from various other employer policies that could be considered important and opposed by some employees, the Majority proceeded to engage in a statutory interpretation of s. 54 of the *Code.* They began with a consideration of the language of s. 54, acknowledging the need to interpret the language of the section purposively and contextually. At para. 52, they state:

> We acknowledge that the language of Section 54(1) is broad enough that it could, in the abstract, be read to include any employer policy - indeed any employer action ("measure, policy, practice or change") – that "affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies". However, the Board interprets the language of the Code, including Section 54, purposively and contextually, to give effect to the legislative intent underlying the wording of the provision.

[26] Mindful of the broad language of s. 54(1), the Majority then proceeded to consider the Board's previous interpretations of s. 54 of the *Code.* After referring to paras. 61 and 62 of the Original Decision, which stated that decisions regarding the application of s. 54 have focussed on changes that affect the organization of the workforce, the Majority considered some of those decisions at para. 54:

> Thus, Section 54 has consistently been interpreted as applying to circumstances where a structural change to the workplace such as a full or partial closure, contracting out of work, or restructuring affects the job security of a significant number of employees: see, for example, *University of British Columbia,* BCLRB No. B371/94 (closure); *Pacific Press, a division of Southam Inc.*, BCLRB No. B374/96 (contracting out); *The Government of Council of the Salvation Army in Canada (Sunset Lodge)*, BCLRB No. B16/2004 (contracting out and reorganization of the workforce); *Health Employers' Association of British Columbia*, BCLRB No. B393/2004 (Leave for Reconsideration of BCLRB No. B415/2003 ("*HEABC*") (restructuring of the workforce); *Wolverine Coal Partnership,* BCLRB No. B106/2015 (Leave for reconsideration in BCLRB B185/2015) ("*Wolverine*") (long-term, indefinite layoff of more than 100 employees). This interpretation reflects the legislative history of Sections 53 and 54, which replaced "technological change" provisions that were also intended to provide a union with certain kinds of recourse when an employer made a structural change to the workplace which affected a significant number of employees.

[27] At paras. 55–64, the Majority canvassed the interpretations of ss. 53 and 54 of the *Code* undertaken by the Board in previous Board decisions, including *Tolko Industries Ltd., Quest Wood Products,* 2020 BCLRB 57 (Leave for Reconsideration of BLCRB No. B33/2019) and *Canfor Pulp Ltd.*, 2021 BCLRD 104 (Leave for Reconsideration of 2020 BLCRB 132. Having considered the prior interpretations which reflect the legislative history of ss. 53 and 54 as discussed in these cases, the Majority concluded as follows:

> 65 In our view, the types of provisions enumerated in Section 54(1)(b) are ones which would ameliorate the effect of a policy change on all of the employees to whom it applies, not just those who fail or refuse to comply with the obligations the policy imposes. In the present case, the Union sought an opportunity to persuade the Employer to "delay the timeline for employees to be fully vaccinated" in order to allow it to craft a "communications strategy" and to allow it to "assist and advise" members who may require accommodations (Original Decision, para. 12). In other words, while we find the adjustments the Union sought to negotiate may protect employees against the consequences of non-compliance with an employer policy or rule, they are not the kinds of provisions contemplated by Section 54(1)(b).
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> 66 Therefore, we find the requirements of the Policy and the consequences of noncompliance are not rationally connected to Section 54(1)(b) provisions of a potential adjustment plan. We find the Policy cannot be distinguished from other types of employer policies that have employment consequences for non-compliance on this basis.

[28] Concluding that s. 54 did not apply to the Policy, the Majority summarized their interpretation of s. 54:

> 68 … Section 54 is intended to apply where the change is of such a nature that 60 days' notice is required for the purpose of endeavouring to develop an adjustment plan as understood in the context of Section 54(1)(b). In our view, the Policy was not a change of this nature.

[29] In his dissent, Associate Chair Matthews also conducted an interpretation of the statute which resulted in a different conclusion than that of the Majority. The Dissent found the Policy "falls firmly within the class of employer conduct which, if the parties had the opportunity, would be expected to be the subject of negotiation", as it was "a topic that is important to [the Union's] membership": at para. 111. Therefore, he concluded s. 54 applied to the Policy.

The Standard of Review

[30] The parties agree that the applicable standard of review is patent unreasonableness. They also agree that the only decision under review is the Reconsideration Decision, as it is the final decision of the Board.

[31] Specifically, ss. 136–139 of the *Code* and ss. 58(1) and (2) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*], which apply to the Board by virtue of s. 115.1 of the *Code*, establish that the standard of review is patent unreasonableness.

[32] Sections 136 through 139 of the Code contain strong privative clauses. Section 136 of the *Code* states the Board must exercise exclusive jurisdiction to hear and decide applications and complaints under the *Code,* and s. 137 states the court "does not have and must not exercise any jurisdiction in respect of a matter that is, or may be…. a matter referred to in section 136…" Section 138 of the *Code* provides that a decision of the Board on a matter over which it has jurisdiction "is final and conclusive and is not open to question or review in a court of any grounds". Section 139 of the *Code* provides that the Board has exclusive jurisdiction to decide a question arising under the *Code.* As Justice Morellato recently observed in *Pan*

Pacific Vancouver v. Unite Here, Local 40, 2023 BCSC 594 [*Pan Pacific*], "it is clear that the legislature has created a statutory regime which confers broad adjudicative and remedial powers on the Board as a specialized tribunal entitled to a high degree of curial deference and judicial restraint": at para. 48.

[33] Sections 58(1) and (2) of the *ATA* provide:

> **58** (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
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> (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
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> > (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
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> > (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
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> > (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.

Consideration of the Patent Unreasonableness Standard

[34] The patent unreasonableness standard has been articulated in a number of decisions from this Court, and from our Court of Appeal. Recently, in *Pereira v. British Columbia Labour Relations Board*, 2023 BCCA 165 [*Pereira*] at para. 93, our Court of Appeal described the patent unreasonableness standard with reference to many of these earlier decisions:

> As explained in *Team Transport Services Ltd. v. Unifor, Local No. VCTA*, 2021 BCCA 211 (at paras. 28–29), the patent unreasonableness standard is a deferential standard:
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> > Patent unreasonableness is the standard that is most highly deferential to the decision maker. There are many descriptions of the standard. The explanation found in *Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 (aff'd *Victoria Times Colonist, a Division of Canwest Mediaworks Publications Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 25-G*, 2009 BCCA 229) is useful:

> [65] When reviewing for patent unreasonableness, the court is not to ask itself whether it is persuaded by the tribunal's rationale for its decision; it is to merely ask whether, assessing the decision as a whole, there is any rational or tenable line of analysis supporting the decision such that the decision is not clearly irrational or, expressed in the *Ryan* [*Law Society of New Brunswick v. Ryan*, 2003 SCC 20] formulation, whether the decision is so flawed that no amount of curial deference can justify letting it stand. If the decision is not clearly irrational or otherwise flawed to the extreme degree described in *Ryan*, it cannot be said to be patently unreasonable. This is so regardless of whether the court agrees with the tribunal's conclusion or finds the analysis persuasive. Even if there are aspects of the reasoning which the court considers flawed or unreasonable, so long as they do not affect the reasonableness of the decision taken as a whole, the decision is not patently unreasonable.
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> In other words, the standard is at the most deferential end of the reasonableness standard …
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> [Emphasis added.]

[35] At para. 94 of *Pereira*, the Court of Appeal explained that given the necessary deference under a standard of patent unreasonableness, the Board "is entitled to be wrong in the eyes of a court if it acts within its jurisdiction".

[36] The parties agree that the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] does not alter the level of judicial deference owed when applying the patently unreasonable standard. However, they agree that a reviewing court should adopt a "reasons first" approach as discussed in *Vavilov* at para. 84:

> [84] … [W]here the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion: see *Dunsmuir*, at para. 48, quoting D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286.
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> [Emphasis added.]

[37] In sum, when applying the patent unreasonableness standard, a court must determine whether the decision under review, taken as a whole, is defensible in respect of the facts and law — that is, the decision is not clearly irrational or fundamentally flawed, even though a court may disagree with its conclusions or find its analysis unpersuasive.

[38] With these legal principles in mind I turn to my analysis.

Analysis

[39] I will conduct my analysis by addressing the Union's two main issues which they submit constitute fundamental flaws that render the Majority decision patently unreasonable. As I conduct my analysis, I am mindful that in doing so I must ask myself whether it is obvious that there exists no rational basis for the Board's conclusion. If there is any rational line of reasoning that could support the conclusion, or if a defect is apparent only after significant searching, I must not interfere: see *Howie v. British Columbia (Labour Relations Board),* 2017 BCSC 1331.

Did the Majority engage in a line of reasoning based on an erroneous finding regarding the non-application of Section 54 to certain workplace policies?

[40] The Union submits that the Majority engaged in a line of reasoning based on a fundamental misunderstanding of the Original Decision. They submit the Majority conflated the lack of jurisprudence from the Board regarding the application of s. 54 to workplace policies with a finding that the section did not apply to workplace policies cited by the Employer. In support of their position, they point to para. 44 of the Reconsideration Decision, where the Majority stated "the Original Decision finds, however, that the Policy is 'distinguishable from the types of policies cited by the Employer', that is, employer policies to which Section 54 does not apply". The Union submits this passage demonstrates that the Majority mischaracterized the findings of the Original Decision, by erroneously asserting that the Board had previously considered the application of s. 54 to the policies cited by the Employer.

[41] I find no merit in this submission. The difficulty with the Union's position is that it urges this Court to consider one paragraph of the Majority decision in isolation and out of context; I decline to do so. Paragraph 44, which simply sets out the Majority's determination that the Employer had satisfied the requirement for a reconsideration of the Original Decision regarding the application of s. 54 to the Policy, does not constitute the entirety of the Majority's decision.

[42] As I discussed earlier in these reasons, at paras. 42–44 of the Reconsideration Decision, the Board was addressing the preliminary question of whether leave for reconsideration should be granted. In doing so, the Majority referred to para. 65 of the Original Decision where the Board stated "I find the Policy is distinguishable from the types of policies cited by the Employer", which the Majority describes as "employer policies to which Section 54 does not apply".

[43] There is nothing inaccurate in the Majority's statement. As set out in the Original Decision, the Employer referred to a number of workplace policies to support their position that the mandatory vaccination policy concerned individual employee behaviour rather than organizational change. At no point did the Employer imply that the Board had considered the application of s. 54 to those policies.

[44] When para. 44 is read in conjunction with paras. 45–51, it is evident that the Majority carefully reviewed all of the Original Decision's findings regarding the Employer's submissions, which referenced other workplace policies in support of their position. Neither the Employer in their submissions, nor the Majority in their decision, suggested the lack of decisions on implementation of s. 54 to workplace policies supported a finding that s. 54 did not apply to the Policy. Nor did the Majority conduct their analysis under the mistaken belief that such decisions existed. Indeed, the Majority acknowledged that the language of s. 54(1) is broad enough that it could, in the abstract, be read to include any employer policy: at para. 52. Had the Majority believed there were previous Board decisions that had already limited the extent to which s. 54 applies to employer policies, they would not have acknowledged the possibility of this broad reading.

[45] To emphasize, there is no merit to the submission that the Majority's decision is irrational based on a reliance on non-existent jurisprudence dealing with the application of s. 54 to workplace policies. It is presumed that Board members are aware of their own jurisprudence, given that labour relations boards exemplify a highly specialized type of administrative tribunal whose members have developed specialized knowledge and expertise in administering comprehensive labour statutes. As stated by Morellato J. in *Pan Pacific*, the Board is a "specialized tribunal [that] has developed its own policies, practices and jurisprudence, and…its expertise and authority is galvanized by a strong privative clause": at para. 49. It is for this reason their decisions are entitled to deference. The Union's submission ignores this expertise and heavily distorts the Majority's analysis. When the Majority reasons are read carefully and in their proper context, there is no support for the Union's submission that the Majority based its findings on a fundamental misunderstanding of the Original Decision.

[46] In conclusion, having reviewed the Reconsideration Decision in detail together with the submissions of the parties, I find that this aspect of the Reconsideration Decision was not patently unreasonable.

Did the Majority appropriately engage in statutory interpretation of Section 54?

[47] The Union submits the second fundamental flaw in the Majority's analysis was the manner in which they conducted their statutory interpretation of s. 54. They argue that while the Majority referred to the requirement to interpret the statute purposively and contextually, they failed to engage in any meaningful analysis. As a result, they submit the Majority's approach meets the description of "absurdity" described by the Supreme Court of Canada in *Rizzo v. Rizzo Shoes Ltd.,* [1998] 1 S.C.R. 27, 1998 CanLII 837 [*Rizzo*]. In support of their position, they contrast the Majority analysis with the analysis conducted by the Dissent, which they say contains a comprehensive review of the appropriate principles and engages in a proper approach to statutory interpretation.

[48] Earlier in these reasons, I detailed the Majority's decision in which they engaged in a statutory interpretation of s. 54, beginning at para. 52, with an acknowledgement that the language of s. 54(1) is "broad enough that it could, in the abstract, be read to include any employer policy". The Majority recognized that statutory interpretation is not conducted in the *abstract*; rather, they are required to interpret the language of the *Code* "*purposively and contextually*, to give effect to the legislative intent underlying the wording of the provision (emphasis added)": at para. 52. At para. 54, the Majority proceeded to engage in their statutory interpretation of s. 54 by considering the language of s. 54, other decisions that have interpreted the language of s. 54, and the legislative history of both ss. 53 and 54. The Majority then proceeded to discuss some of those decisions in more detail (at paras. 55–68) before concluding that s. 54 does not apply to the Policy.

[49] The Union reviewed the Dissent in some detail, contrasting its statutory interpretation with that of the Majority, and argued that the Majority should have engaged in a more substantive analysis, as was done by the Dissent. I see no merit in this submission, which I would characterize as one focussed on form over substance.

[50] There is also no merit in the Union's complaint that the Majority relied on prior Board decisions that did not examine the application of s. 54 to a workplace policy. In order to review the Board's prior interpretations of s. 54, the Majority necessarily had to rely on decisions considering the section in a different context; indeed, the Union itself recognizes the Board had not considered this particular issue in the past. Therefore, the Majority cannot be faulted in its exercise of statutory interpretation for resorting to cases that have interpreted s. 54 in circumstances other than workplace policies.

[51] As discussed above, contrary to the Union's submissions I find the Majority did engage in a meaningful statutory interpretation of the language of s. 54. In doing so, they considered the language of the provision, as well as other decisions which have canvassed the legislative history and interpreted the section, albeit not in

relation to workplace policies. The Majority also referred to a report by the 1992 Sub-committee of Special Advisers on Recommendations for Labour Law Reform, which recommended the addition of ss. 53 and 54 to the *Code*: at para. 57. In sum, the Majority conducted a considered interpretation of s. 54, its home statute, in accordance with the basic rules of statutory interpretation by considering the words of s. 54 "read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Code, the object of the Code, and the intention of Parliament": *Rizzo* at para. 21.

[52] In conclusion, having reviewed the Reconsideration Decision in detail together with the submissions of the parties, I find that this aspect of the Reconsideration Decision was not patently unreasonable.

[53] Finally, with respect to the Union's remaining two arguments — first, that the Policy falls within the scope of s. 54 and, second, that the grievance procedure is not an adequate or equivalent remedy — I need not consider those other arguments, given my findings on the two main issues.

Conclusion

[54] The Petition is dismissed with costs to the Respondent Employer. Pursuant to its usual practice on judicial review, the Board did not seek costs.

"Devlin J."