

| | |
|--------------------------------|--------------------|
| FEDERAL COURT OF APPEAL | |
| COUR D'APPEL FÉDÉRALE | |
| F | August 10, 2023 |
| I | le 10 août, 2023 |
| L | Ginette Lischenski |
| E | |
| D | |
| D E P O S E | |
| VANCOUVER, BC | 1 |

Court File No. *A-202-23***FEDERAL COURT OF APPEAL**

BETWEEN:

International Longshore and Warehouse Union Ship and Dock Foremen, Local 514

APPLICANT

AND:

DP World Prince Rupert Inc.

RESPONDENT

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Vancouver.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613--992--4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

August , 2023

Issued by:



Registry Officer

Address of local office:

Federal Court Registry
Pacific Centre PO Box 10065
701 West Georgia Street
Vancouver, British Columbia, V7Y 1B6
Fax: 604-666-8181

TO: DP World Prince Rupert Inc.
C/O Roper Greyell LLP
Suite 1850
745 Thurlow Street
Vancouver, British Columbia, V6E 0C5
Attention: Ryan Copeland
Andrew Nicholl

AND TO: Canada Industrial Relations Board
C.D. Howe Building
4th Floor West
240 Sparks Street
Ottawa, Ontario
K1A 0X8

AND TO: Attorney General of Canada
Department of Justice Canada
(BC Regional Office)
900 – 840 Howe Street
Vancouver, BC
V6Z 2S9

Application

This is an application for judicial review of a decision issued by the Canadian Industrial Relations Board (the "Board") on July 12, 2023 (the "Decision").

The Applicant makes application for:

1. An order quashing or setting aside the Decision;
2. Costs; and
3. Any other order this Honourable Court deems just.

The grounds for the application are:

1. The Decision concerns an application made by the Applicant to the Board requesting that the Board add the position of dispatcher to the Applicant's certification of a bargaining unit of employees employed by the Respondent, pursuant to section 18 of the *Canada Labour Code*.
2. The Respondent objected to the Applicant's application on the basis that the dispatchers that the Applicant requested the Board add to its certification were employed by a different company, DP World (Canada) Inc.
3. The parties made written submissions with respect to the dispatchers and the Board's jurisprudence for determining an employee's "true employer" for labour relations purposes. The Board then scheduled an oral hearing, and the parties entered evidence and made further submissions on the "true employer" of the dispatchers in question.
4. In the Decision, the Board found that the "true employer" of the dispatchers was DP World (Canada) Inc., and on that basis declined to add the position of dispatcher to the Applicant's certification.
5. In the Decision, the Board:
 - a. erred in law, as it improperly and unreasonably applied and weighed the "true employer" factors in a manner that was inconsistent with the existing jurisprudence;
 - b. based its decision on an erroneous finding of fact that it made without regard for the material before it, in finding that the two dispatchers were not employed by the Respondent, and in finding that they report to an employee of DP World (Canada) Inc.; and
 - c. failed to observe a principle of natural justice, procedural fairness, or other procedure that it was required by law to observe by failing to address evidence

and arguments raised by the Applicant, including regarding the labour relations concerns raised by the dispute.

This application will be supported by the following material:

1. Affidavit of Mellissa Cao; and
2. Any other material the Applicant may seek to enter and that this Honourable Court may allow.

The Applicant requests that the Board send a certified copy of the following material that is not in the possession of the Applicant, but is in the possession of the Board, to the Applicant and to the Registry, including:

1. Any documents relied upon by the Board in making the Decision, other than the official correspondence and submissions of the Parties; and
2. Any policy documents relied upon by the Board in making the Decision.

Dated: August 11, 2023



(Signature of solicitor or applicant)

Shirin Kiamanesh

KOSKIE GLAVIN GORDON

1650 – 409 Granville Street

Vancouver, British Columbia

V6C 1T2

SKiamanesh@koskieglavin.com