



Reasons for decision

Communications, Energy and Paperworkers Union
of Canada,

applicant,

and

Bell Canada; Bell Internet Management Services
Inc.,

employers.

Board File: 28738-C
Neutral Citation: 2012 CIRB 761
July 20, 2012

[Please note that the Board has decided to reissue this previously unreported decision in a Reasons for decision format to make it more easily accessible to the labour-management community.]

A panel of the Canada Industrial Relations Board (Board), composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. John Bowman and André Lecavalier, Members, considered the above-noted application.

Section 16.1 of the *Canada Labour Code (Part I—Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to issue an interim decision without an oral hearing.

Counsel of Record

Mr. Micheil M. Russell, for Communications, Energy and Paperworkers Union of Canada;

Ms. Maryse Tremblay and Ms. Mireille Bergeron, for Bell Canada;

Mr. William Hlibchuk, for Bell Internet Management Services Inc.

[1] On May 4, 2011, the Communications, Energy and Paperworkers Union of Canada (CEP) filed an application under sections 35 and 44 of the *Code*. In that application, the CEP alleged that the respondent employers, Bell Canada (Bell) and Bell Internet Management Services Inc. (BIMS), constituted a single employer, or, in the alternative, that a sale of business had occurred between them which impacted the CEP's representation rights.

[2] Bell and BIMS filed their responses in May, 2011. It is not contested that BIMS is a wholly owned subsidiary of Bell. Bell described its relationship with BIMS as involving call centre services. These services included answering calls from Bell Canada customers regarding their Internet service and "one bill" invoices.

[3] BIMS described how it began in 2000 initially as a numbered company and Bell subsidiary, but adopted its current name in 2003. It worked as a customer service resource for Bell customers who were having Internet difficulties. BIMS raised the preliminary argument that its work as a call centre made it subject to provincial jurisdiction.

[4] The CEP argued that BIMS was an integral component of Bell's evolving telecommunications business.

[5] On November 30, 2011, the Board's Industrial Relations Officer (IRO) filed his Report and referred the matter to the Board for adjudication.

[6] At the request of the Board, which had reviewed the file, the IRO prepared a second Report which he sent to the parties on April 19, 2012. The Board attaches a copy of that report to this decision (Appendix A) and will not repeat all of the facts found therein.

[7] The following are some of the more pertinent facts described in that IRO Report:

1. BIMS (which operates under other names as well) has operations in Montreal and is characterized as a bilingual call centre located on the 2nd and 3rd floors of a Bell building;
2. BIMS does not generate income, but provides support to existing Bell customers for billing concerns. It works exclusively for Bell in all of its activities;
3. Bell manages BIMS' call volume and Bell's Command Centre coordinates the schedules of BIMS' employees;
4. BIMS employees have a Photo ID security pass, which Bell issues, and has Bell's logo on it;

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5. BIMS employees all sign Bell's Code of Conduct;
 6. Bell employees create and design the training modules used for BIMS' employees;
 7. BIMS handles Bell customer inquiries covering topics such as rates, changes, credits, clarifications, and promotions involving wireline, Internet, TV, as well as Bell's bundles and packages of services;
 8. BIMS Ottawa operations has 3 distinct units located again in Bell buildings:
i) Small/Medium Business Technical Support; ii) Residential Internet Technical Support; and iii) Bell Second Line/ Level II IPTV Resolution Team;
 9. BIMS' three Ottawa units assist Bell's customers with bilingual technical support for telephone, Internet and/or TV;
 10. Bell assists in the recruitment of BIMS' employees.

[8] Based on the facts in the parties' pleadings and in the IRO Reports, the Board is satisfied that BIMS falls within federal jurisdiction for the purposes of the CEP's application.

[9] BIMS' services to Bell constitute its exclusive activities. In the Board's view, BIMS is the type of entity to which the Supreme Court of Canada's derivative jurisdiction test finds application: see *Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail)*, 2012 SCC 23 at paragraph 48.

[10] This conclusion is similar, from an analytical perspective, to the one the Board reached in *Nordia (Ontario) Inc.*, 2003 CIRB 221 (*Nordia*). *Nordia (Ontario) Inc.* (*Nordia*), provided directory assistance services to Bell and others. That decision found that *Nordia*, while more at arm's length to Bell than BIMS, nonetheless remained vital and essential:

[34] Consequently, the Board is satisfied that *Nordia's* operations meet the test of being "vital, essential and integral" to the core federal telecommunications operations of Bell. The evidence clearly established operational co-operation and functional integration between the two entities. As well, the interconnection between the two corporations was necessary for Bell to fulfill the mandatory CRTC [Canadian Radio-television Telecommunications Commission] standards set for the performance of the required directory assistance services performed by *Nordia* on behalf of Bell.

[11] At the joint request of the parties, the Board later revoked its certification orders in *Nordia*, due to subsequent developments and changes.

[12] In addition, and by analogy, the Board does not see a difference in result between this case with that of *XL Digital Services Inc. v. Communications, Energy and Paperworkers Union of Canada*, 2011 FCA 179 (*XL Digital*). In that decision, the Federal Court of Appeal concluded

that an independent contractor, HomeTech, which performed cable installation and other services in Rogers' customers' homes, was vital to the federally-regulated cable undertaking:

[27] Counsel for HomeTech agreed that the Board had applied the correct four-pronged test established in *Northern Telecom v. Communications Workers*, [1980] 1 S.C.R. 115 at 135, for answering this question: (i) the general nature of HomeTech's operations as a going concern; (ii) the nature of the corporate relationship between HomeTech and Rogers; (iii) the importance of the work done by HomeTech for Rogers as compared with its other customers; and (iv) the extent of the involvement of HomeTech's employees in the operation of Rogers' core federal undertaking.

[28] To paraphrase Justice Estey, writing for the majority of the Court in *Northern Telecom v. Communication Workers*, [1983] 1 S.C.R. 733 at 770, the question is: to what extent was the work of HomeTech's employees integral to Rogers' federal undertaking? It is important to bear in mind here that I have already concluded that the Board did not err in concluding that Rogers' federal undertaking extends from the headend to the cable and equipment connecting its customers to the network.

[29] Nearly all the facts point to the conclusion that HomeTech's employees were highly integrated into the federal undertaking. **In particular, HomeTech's operations "as a going concern" consisted of connecting Rogers' customers to the network and to providing related services. Although HomeTech was independently owned, Rogers was HomeTech's only customer, and the HomeTech employees in question devoted all their time to performing the work covered by the contracts between Rogers and HomeTech. The allocation and scheduling of the employees' work was controlled by Rogers.**

[30] **The principal submission on this issue made in oral argument by counsel for HomeTech was that connecting customers' television sets to the network through a digital box was a peripheral part of the federal undertaking. The "guts" of the network, he said, is to capture, convert and transmit signals to the distribution taps.**

[31] **I do not agree. Each part of the network is essential to the transmission of signals to customers. The receipt of the signal by Rogers' customers cannot plausibly be said to be subsidiary to its transmission to an outlet in the street. The only purpose of Rogers' network is to enable its customers to receive the signal on equipment in their homes.**

(emphasis added)

[13] BIMS' services, which ensure that Bell customers receive the telecommunications services for which they are paying, appear analogous to HomeTech's cable installation work in *XL Digital*.

[14] BIMS, unlike HomeTech, has always been a wholly-owned subsidiary of, and exclusive provider to, Bell. HomeTech by contrast was independently owned, but provided services exclusively to Rogers.

[15] BIMS' operations as a going concern ensure that Bell's customers who are experiencing difficulties received prompt and effective assistance. Whether Bell, or a wholly-owned subsidiary provides these services, they are vital to ensure continued service for Bell's paying customers. This is very different from a situation where Bell might decide to contract out building cleaning services rather than do them in house. Those types of services, if Bell even performs them, fall outside the vital or essential characterization.

[16] While BIMS employees may not perform on-site cable installations, they nonetheless allow Bell customers to access their telecommunications services. Bell may provide technical assistance to its clients directly or, subject to its collective bargaining obligations, may have others, including wholly-owned on-site subsidiaries, perform these services. The use of BIMS was just one method Bell had to provide, *inter alia*, a full range of essential services to its customers.

[17] The Board has not been convinced that creating a wholly-owned and on-site subsidiary to provide essential technical services to customers makes BIMS any less vital to Bell's telecommunications undertaking or removes it from federal jurisdiction.

[18] The Board is accordingly satisfied that it has jurisdiction over BIMS. The Board will convene forthwith a Case Management Conference with the parties and will set tentative hearing dates if another earlier method of resolution is not available.

[19] The pleadings to date do not allow the Board to make a determination on the CEP's main allegations. For example, even if the five conditions required for a single employer declaration existed, the Board lacks particulars which would allow it to consider its discretion whether to issue a declaration.

[20] This is a unanimous decision of the Board.

Graham J. Clarke
Vice-Chairperson

John Bowman
Member

André Lecavalier
Member