



Reasons for decision

Mataya Reid,

applicant,

and

Canadian Union of Postal Workers,

respondent,

and

Canada Post Corporation,

employer.

Board File: 31553-C

Neutral Citation: 2016 CIRB **818**

March 15, 2016

The Canada Industrial Relations Board (Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. André Lecavalier and Gaétan Ménard, Members.

Section 16.1 of the *Canada Labour Code (Part I—Industrial Relations) (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 dismiss the application without an oral hearing.

Parties' Representatives of Record

Ms. Mataya Reid, on her own behalf;

Mr. Philippe Arbour, for the Canadian Union of Postal Workers;

Ms. Stéfanie Germain, for the Canada Post Corporation.

These reasons for decision were written by Mr. Graham J. Clarke, Vice-Chairperson.

I. Nature of the Application

[1] On February 17, 2016, Ms. Mataya Reid filed a reconsideration application concerning the Board's decision in *Reid*, 2016 CIRB 807 (*Reid 807*).

[2] In *Reid 807*, the Board concluded that the Canadian Union of Postal Workers (CUPW) had not violated its duty of fair representation (DFR) under section 37 of the *Code*:

37 A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.

[3] The Board has decided to dismiss Ms. Reid's reconsideration application, since it does not raise a *prima facie* case. Board decisions are final when issued, subject to a limited Board-created reconsideration process.

[4] Ms. Reid's application sought to reargue her original case in the hope of obtaining a different result. She did not persuade the Board that there were any proper grounds requiring reconsideration.

[5] These are the reasons for the Board's decision.

II. The Board's Reconsideration Process

[6] The limited reconsideration process the Board has created for recently-issued decisions is well known. For recent comments on that longstanding process, see *Petrovic*, 2015 CIRB 788 (*Petrovic 788*) and *Buckmire*, 2013 CIRB 700 (*Buckmire 700*).

[7] Board decisions are final when issued. Subject to judicial review proceedings, there is no right of appeal, whether statutory or otherwise, from a Board decision. Neither does the Board rehear a case which has already been decided.

[8] In limited circumstances, an applicant may persuade the Board to reconsider a case. In *Buckmire 700*, due to a change in the *Canada Industrial Relations Board Regulations, 2012*, the Board commented on the main, though not exclusive, grounds for obtaining reconsideration:

[36] The main grounds for reconsideration, and the applicant's obligations when pleading an application for reconsideration, remain as described below. Decisions of the Registrar under section 3 of the *Regulations* similarly remain subject to reconsideration.

1. New Facts

[37] This ground involves new facts which the applicant did not put before the Board when originally pleading its case. It is not an opportunity for the applicant to add facts it had omitted to plead.

[38] As summarized in *Kies 413, supra*, an application for reconsideration will include, at a minimum, the following information about the alleged new facts:

1. What the new facts are;
2. Why the applicant could not have put them before the Board panel originally;
and
3. How those new facts would have changed the Board's decision under review.

[39] Generally, the original panel will consider applications raising this ground, given its advantageous position to decide whether "new facts" exist and their impact, if any, on its previous decision.

2. Error of Law or Policy

[40] Any alleged error of law or policy must cast serious doubt on the Board's interpretation of the *Code*. This creates a two-pronged test. A mere difference of opinion about the legal or policy interpretation will not justify reconsideration.

[41] A party must also have raised the point of law or policy issue in question before the original panel.

[42] The minimum pleading requirements for an allegation raising an error of law or policy remain as set out in *Kies 413, supra*:

1. A description of the law or policy in issue;
2. The precise error the original panel made in applying that law or policy; and
3. How that alleged error cast serious doubt on the original panel's interpretation of the *Code* or policy.

3. Natural Justice and Procedural Fairness

[43] Reconsideration may raise allegations that the original panel failed to respect the principles of natural justice or those related to procedural fairness.

[44] As described in *Kies 413, supra*, a party's minimum pleading requirements would address the following issues:

1. An identification of the particular principle of natural justice or procedural fairness in issue; and
2. A description of how the original panel allegedly failed to respect that principle.

E. Summary of Main Grounds for Reconsideration

[45] In summary, the main grounds for reconsideration may be described as follows:

- (a) New facts that the applicant could not have brought to the attention of the original panel and which would likely have caused the Board to arrive at a different conclusion;
- (b) Any error of law or policy that casts serious doubt on the interpretation of the *Code* or policy;
- (c) A failure of the Board to respect a principle of natural justice or procedural fairness; and
- (d) A decision made by a Registrar under section 3 of the *Regulations*.

[46] It is with the above principles in mind that the Board will address Mr. Buckmire's application.

[9] The Board advises applicants who ask for reconsideration of their dismissed DFR complaints that a *prima facie* case process will take place, just as one takes place for all original DFR complaints. Only if a *prima facie* case exists will the Board oblige the respondents to respond to the reconsideration application, as noted in the Board's letter of February 18, 2016:

The application will be submitted to a panel of the Board to determine if it contains sufficient information and grounds in support of the application for reconsideration under section 18 of the *Canada Labour Code (Part I—Industrial Relations)* (the *Code*).

If the Board determines through the information it has received that the application does not establish sufficient grounds to sustain it, a summary decision will be issued and the file will be closed. If the Board is of the view that further consideration of the matter is warranted, the respondent and the employer will be offered an opportunity to file a response to the application. The applicant will then have an opportunity to reply.

III. Analysis and Decision

[10] The Board may decide any application or complaint without an oral hearing:

16.1 The Board may decide any matter before it without holding an oral hearing.

[11] It is therefore imperative for all parties to file full submissions with the Board. The reconsideration process is not a second opportunity for a party which has lost its case to provide further information or analysis which they could have provided originally.

[12] In Ms. Reid's specific situation, the Board provided her with a second chance in her original case to recast her original pleading, given *inter alia* the numerous attachments she had included with her complaint: *Reid*, 2013 CIRB 693 (*Reid* 693). The importance of filing all submissions and documentation had been fully explained in *Reid* 693.

[13] Ms. Reid described her reconsideration application at various places as an "appeal". Her 93-page application, most of which is made up of attachments, then proceeds to reargue her original complaint.

[14] She similarly revisited the facts and argued afresh why those facts ought to have resulted in a different conclusion.

[15] In *Petrovic* 788, the Board already commented how reconsideration is not an opportunity to redo the original case a second time:

[29] Mr. Petrovic's pleading indicates he believed that he could argue his case a second time by filing an application for reconsideration. He asked the reconsideration panel to review the extensive documentation he had filed with his original complaint, as well as his original arguments, in the hope of obtaining a different conclusion.

[30] As noted, an appeal or hearing *de novo* has never formed part of the Board's reconsideration process. Indeed, it would seriously undermine the Board's effectiveness if it were obliged to decide its cases twice.

[31] In *Société Radio-Canada*, 2015 CIRB 763, the Board found that one particular argument, out of the many raised, merited a review under the reconsideration process. In contrast, Mr. Petrovic, by asking simply that the Board hear and determine his case a second time, did not plead a single issue which would raise a proper ground for reconsideration: *Buckmire* 700.

[32] Given that Mr. Petrovic's application merely seeks a rehearing of his original complaint, the Board dismisses the matter.

[16] Those same comments apply to Ms. Reid's reconsideration application. She disagrees, as she is entitled, with the Board's conclusion in *Reid* 807 that CUPW had not violated section 37 of the *Code*. However, mere disagreement with a Board decision is not a ground for reconsideration.

[17] Ms. Reid did not suggest that "new facts" existed as that ground is more fully described in the earlier extract from *Buckmire* 700. Neither did Ms. Reid set out, in any comprehensive way, allegations of an error of law or policy.

[18] In such circumstances, the Board is obliged to dismiss this application on a summary basis, since it does not raise a *prima facie* case to which the respondents would be required to file submissions.

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

Graham J. Clarke
Vice-Chairperson

André Lecavalier
Member

Gaétan Ménard
Member