Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Maria Antonia Jaime,

applicant,

and

CanJet Airlines, a division of I.M.P. Group Limited,

respondent.

Board File: 32419-C
Neutral Citation: 2018 CIRB **886**
August 3, 2018

The Canada Industrial Relations Board (the Board) was composed of Ms. Ginette Brazeau, Chairperson, and Mesdames Louise Fecteau and Lynne Poirier, Vice-Chairpersons.

Parties' Representatives of Record

Ms. Dagmar Yasi Sampayo-Jaime, for Ms. Maria Antonia Jaime;
Ms. Cristina E. Firmini, for CanJet Airlines, a division of I.M.P. Group Limited.

These reasons for decision were written by Ms. Louise Fecteau, Vice-Chairperson.

I. Nature of the Application

[1] On January 3, 2017, Ms. Dagmar Yasi Sampayo-Jaime, on behalf of Ms. Maria Antonia Jaime (the applicant), filed an application for reconsideration of the Board's decision in *Jaime*, 2017 CIRB 864 (RD 864) (file no. 30483-C).

[2] In RD 864, the Board dismissed the applicant's complaint filed pursuant to section 133(1) of the *Canada Labour Code (Part II–Occupational Health and Safety)* (Part II of the *Code*). The applicant alleged that CanJet Airlines, a division of I.M.P. Group Limited (CanJet or the employer), took reprisals against her in various ways, to the extent of dismissing her, because she filed two complaints of workplace violence and harassment with the employer.

[3] The applicant had filed her complaint with the Board on June 3, 2014, and an amended complaint a few days later.

[4] The original panel held seven days of hearings, during which it heard five witnesses, including the applicant and her son. The applicant was represented by her daughter, Ms. Dagmar Yasi Sampayo-Jaime. The Board concluded that no reprisals had been taken against the applicant as a result of her having filed complaints under Part II of the *Code*.

[5] In fact, in RD 864, the Board first rejected several of the allegations of reprisal in the applicant's complaint, finding that the reported events had occurred outside of the 90-day time limit set out in section 133(2) of Part II of the *Code*. Regarding the merits of the other allegations of reprisal made by the applicant, including those related to her dismissal, the Board concluded that the applicant had failed to establish that she had been dismissed for filing her complaints of workplace violence and harassment, and that no reprisals pursuant to section 147 of Part II of the *Code* had been taken against her.

[6] The applicant essentially raised two grounds in support of her application for reconsideration. She alleges that the Board failed to respect a principle of natural justice and stated that she had obtained "new, material evidence" (translation). She also alleges that the Board accepted the employer's interpretation of the applicable collective agreement, revealing a lack of impartiality.

II. Analysis and Decision

[7] Section 16.1 of the *Canada Labour Code (Part I–Industrial Relations)* (Part I of 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 determine this complaint without an oral hearing.

[8] Section 22(1) of Part I of the *Code* provides that the Board's decisions are final. The privative clause reads as follows:

> **22 (1)** Subject to this Part, every order or decision of the Board is final and shall not be questioned or reviewed in any court, except in accordance with the *Federal Courts Act* on the grounds referred to in paragraph 18.1(4)(a), (b) or (e) of that Act.

[9] While the Board's decisions are final, the Board has the power to reconsider its decisions pursuant to section 18 of Part I of the *Code*:

> **18** The Board may review, rescind, amend, alter or vary any order or decision made by it, and may rehear any application before making an order in respect of the application.

[10] However, the Board has repeatedly pointed out in past decisions that the reconsideration process is not an appeal and should not serve as a means of rearguing the case put before the original panel. The reconsideration panel will not second-guess the original panel's exercise of discretion.

[11] In *Williams* v. *Teamsters Local Union 938*, 2005 FCA 302, the Federal Court of Appeal noted the difference between an appeal and an application for reconsideration:

> [7] I am unable to say that the Board's Reconsideration decision was patently unreasonable. A request for reconsideration is neither an opportunity to obtain a new hearing nor is it an appeal. In conducting its review of the Initial decision, the reconsideration panel was not to substitute its own appreciation of the facts for that of the original panel. In this case, based on the facts before it, the original panel concluded that the Union was within its right not to pursue the matter further and there are no new facts or grounds now advanced by the applicant that would alter this conclusion.

[12] In *Buckmire*, 2013 CIRB 700, the Board described the grounds for reconsideration and the essential information that should be included in a reconsideration application:

> **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:
>
> …
>
> **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.

[13] In this case, the Board finds that the application for reconsideration filed by the applicant must be dismissed. The grounds raised in support of her application are without merit, for the following reasons.

1. Failure to Respect a Principle of Natural Justice

[14] In her application for reconsideration, the applicant alleges a failure to respect a principle of natural justice, without, however, saying why. No explanation of how the original panel failed to respect this principle is provided. In fact, it seems that her criticisms have more to do with the fact that, according to the applicant, the original panel interpreted the collective agreement.

[15] The Board notes that the original panel held seven days of hearings and heard several witnesses, including the applicant, and that the applicant had the opportunity to cross-examine the employer's witnesses. The original panel also heard the parties' respective submissions. The applicant certainly cannot accuse the original panel of breaching a principle of natural justice.

[16] The applicant bore the burden of proof given the nature of the complaints she filed, and the Board determined, in light of the detailed facts and evidence before it, that she had not met this burden.

[17] Regarding the applicant's criticism of the original panel, which she accuses of interpreting the applicable collective agreement, the Board does not share this opinion. The original panel wondered why the applicant had not filed a grievance regarding the recall-to-work procedure or her dismissal. The Board specifically indicated that it did not have the jurisdiction to interpret the

collective agreement and that it would not second-guess the interpretation accepted by the union and the employer regarding the applicable provisions.

[18] Consequently, the Board cannot conclude that the original panel failed to respect a principle of natural justice in the circumstances.

2. New Facts

[19] The applicant did not provide any additional explanations or evidence in her application regarding the new facts that could not have been brought to the original panel's attention when she filed her complaint. Yet, it was her responsibility to submit all the relevant information to allow the Board to assess the reasons why these facts were not provided at the hearing of the complaint and how they could have changed the original panel's decision.

[20] Consequently, and since the applicant did not provide any arguments on this subject, the Board does not find that this ground justifies a reconsideration of RD 864.

III. Conclusion

[21] In light of the foregoing, the Board finds that the applicant has not raised any ground that would justify a reconsideration of RD 864. The fact that the applicant does not agree with the conclusions of the original panel is not an appropriate ground to justify a reconsideration of that decision.

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

Ms. Ginette Brazeau
Chairperson

Ms. Louise Fecteau
Vice-Chairperson

Ms. Lynne Poirier
Vice-Chairperson