

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150917

Docket: A-357-14

Citation: 2015 FCA 200

**CORAM: DAWSON J.A.
RYER J.A.
NEAR J.A.**

BETWEEN:

DR. GABOR LUKÁCS

Appellant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

Heard at Halifax, Nova Scotia, on September 17, 2015.
Judgment delivered from the Bench at Halifax, Nova Scotia, on September 17, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Halifax, Nova Scotia, on September 17, 2015).

DAWSON J.A.

[1] This is an appeal on a question of law, brought with leave of this Court pursuant to section 41 of the *Canada Transportation Act*, S.C. 1996, c. 10 (Act). The question involves the validity of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, SOR/2014-14 (New Rules) made by the Canadian

Transportation Agency in accordance with the process contained in the *Statutory Instruments Act*, R.S.C. 1985, c. S-22.

[2] On this appeal, the appellant asks that:

- i) Paragraphs 41(2)(b), (c) and (d) of the New Rules be quashed on the ground that they are *ultra vires* the powers of the Agency; and
- ii) The New Rules be declared invalid to the extent they are unreasonable and inconsistent with the requirements of procedural fairness and so exceed the power conferred on the Agency to make rules respecting the procedures for dealing with matters and business before it.

[3] On the second point, the appellant asserts that the New Rules are unreasonable and inconsistent with requirements of procedural fairness to the extent that they:

- provide no opportunity for parties to object to requests for leave to intervene made by non-parties;
- remove the express requirement that the Agency provide reasons for its orders and decisions (a requirement contained in the previous version of the Agency's rules); and,
- allow proceedings to be determined without an oral hearing, while providing no meaningful opportunity to challenge statements made by adverse witnesses and no right to adduce oral evidence.

[4] We are all of the view that the appeal should be dismissed. We reach this conclusion for the following reasons.

[5] First, paragraphs 41(2)(b), (c) and (d) of the New Rules allow the Agency to stay a decision or order made by it when: a review is being conducted by the Governor in Council pursuant to section 40 of the Act; an application for leave to appeal is made to this Court under section 41 of the Act; or, the Agency considers it just and reasonable to issue a stay. Section 25 of the Act confers upon the Agency “all the powers, rights and privileges that are vested in a superior court” with respect to “all matters necessary or proper for the exercise of its jurisdiction”. Superior courts possess inherent jurisdiction to stay their decisions and to otherwise control their process and functions. As this jurisdiction has been conferred upon the Agency, the impugned provisions of subsection 41(2) of the New Rules are not *ultra vires* the powers of the Agency.

[6] Next, dealing with the appellant’s submissions with respect to the fairness of the New Rules, it is important to situate those concerns in the context of the New Rules in their entirety.

The New Rules:

- i) Require the Agency to conduct all proceedings in a manner proportionate to the importance and complexity of the issues at stake and the relief claimed (section 4);
- ii) Are to be interpreted in a manner that facilitates the most expeditious determination of every dispute proceeding, the optimal use of Agency and party resources and the promotion of justice (subsection 5(1));

- iii) Allow the Agency, at the request of a person, to dispense with compliance with, or vary, any rule at any time and to grant other relief on any terms that will allow for the just determination of the issues (section 6);
- iv) Allow the Agency on its own initiative to do anything that may be done at the request of a person (subsection 5(2));
- v) Allow a person to request a decision on any issue that arises within a dispute proceeding (subsection 27(1)) and,
- vi) Allow a person to request leave to file a document whose filing is not otherwise provided for under the New Rules (subsection 34(1)).

[7] Seen in this light, the New Rules provide sufficient flexibility to the Agency to allow it to adjudicate disputes in a manner that fulfils the requirements of procedural fairness and they are within the power conferred upon the Agency to make rules.

[8] With respect to the three specific concerns articulated by the appellant, first, under section 6 the Agency may permit a party to file a reply to a request for intervener status, and subsection 34(1) allows a party to seek such relief.

[9] Second, there is no need for a rule requiring the Agency to give reasons for its orders and decisions. The Agency is bound by common law obligations of procedural fairness, which can include the obligation to give reasons.

[10] Third, the New Rules do provide a mechanism by which parties can test the evidence of parties adverse in interest. Subsection 24(1) allows a party to request that any party adverse in interest respond to written questions that relate to the matters in dispute or produce documents in its possession or control relevant to the dispute. Section 27 allows a party to request that it examine or cross-examine a witness orally. Subsection 40(1) allows the Agency to require the parties to attend a conference for the purpose of obtaining the admission of certain facts or determining whether the verification of those facts by affidavit should be required (paragraph 40(1)(d)) or for the purpose of establishing the procedure to be followed in the dispute proceeding (paragraph 40(1)(e)).

[11] For these reasons, the appeal will be dismissed. The Agency did not seek costs; no costs will be ordered.

“Eleanor R. Dawson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-357-14

STYLE OF CAUSE: DR. GABOR LUKÁCS v.
CANADIAN TRANSPORTATION
AGENCY

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: SEPTEMBER 17, 2015

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
RYER J.A.
NEAR J.A.

DELIVERED FROM THE BENCH BY: DAWSON J.A.

APPEARANCES:

Dr. Gabor Lukács FOR THE APPELLANT
(self-represented)

Simon-Pierre Lessard FOR THE RESPONDENT
Tim Jolly

SOLICITORS OF RECORD:

Legal Services Branch FOR THE RESPONDENT
Canadian Transportation Agency
Gatineau, Québec