Date: 20060517

Docket: A-224-05

Citation: 2006 FCA 185

CORAM: **DÉCARY J.A.**
LINDEN J.A.
SEXTON J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Respondent

Heard at Ottawa, Ontario, on May 17, 2006.

Judgment delivered from the Bench at Ottawa, Ontario, on May 17, 2006.

REASONS FOR JUDGMENT OF THE COURT BY: SEXTON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on May 17, 2006)

SEXTON J.A.

[1] This is an application for a judicial review of *Professional Institute of the Public Service of Canada v. Treasury Board*, 2005 PSLRB 36 ["*PIPS*"], a decision of the Vice-Chairperson of the Public Service Labour Relations Board (the "Board"). The Board found that the applicant, the Treasury Board, violated the statutory freeze in section 52 of the *Public Service Staff Relations Act* when it refused to pay a terminable allowance (the "TA") during the period it was negotiating a new collective agreement with the respondent, the Professional Institute of the Public Service of Canada.

[2] The applicant challenges this decision, claiming that the rules of natural justice and procedural fairness required it to have an oral hearing before the Board.

[3] We disagree. The greatest level of deference on procedural matters should be afforded to the Board, which is a highly expert body. *TELUS Communications Inc. v. Telecommunications Workers Union*, 2005 FCA 262. In *Prassad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560 at 568-69, the Supreme Court of Canada observed:

> As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice.

[4] At the outset of the proceedings before the Board, the Board wrote to the parties saying that the matter would proceed based upon written submissions. The applicant did not object but rather argued that if the Board concluded that the Agreement was ambiguous, then an oral hearing would be necessary so as to consider the extrinsic evidence required to interpret it. Having said this, the applicant nevertheless in its written submissions provided extrinsic evidence relating to the interpretation of the agreement which it obviously found persuasive.

[5] In fact, the Board found that the Agreement was unambiguous. In this context, the Board said in *PIPS* at paragraph 45:

> The employer submits that past practice establishes that the parties treated the TA as being within the section 52 exception. I do not agree, based on the submissions of the parties. Again, I think it would take specific discussions between the parties to clearly establish that the TA was being dealt with at the outset of negotiations to specifically avoid having section 52 terminate the provision. No such discussions took place at past negotiation sessions that I was made aware of. Indeed, the item was clearly negotiated. <u>In my mind, there is no ambiguity</u>, nor does the negotiating

> history need to be explored any further than it has been in these written submissions [emphasis added]

[6] While both parties did submit extrinsic evidence in their written submissions, the Board did not appear to base its decision on them.

[7] In conclusion, we can find no procedural unfairness in this instance. The application for judicial review is dismissed with costs to the respondent.

"J. Edgar Sexton"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-224-05
STYLE OF CAUSE:	Attorney General of Canada v. Professional Institute of the Public Service of Canada
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	May 17, 2006
REASONS FOR JUDGMENT OF THE COURT BY:	Décary, Linden and Sexton JJ.A.
DELIVERED FROM THE BENCH BY:	Sexton J.A.

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