

Date: 20071212

Docket: A-92-07

Citation: 2007 FCA 396

**CORAM: RICHARD C.J.
DÉCARY J.A.
LÉTOURNEAU J.A.**

BETWEEN:

SPORTS INTERACTION

Appellant

and

TREVOR JACOBS

Respondent

Heard at Montréal, Quebec, on December 12, 2007.

Judgment delivered from the Bench at Montréal, Quebec, on December 12, 2007.

REASONS FOR JUDGMENT OF THE COURT BY:

LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on December 12, 2007)

LÉTOURNEAU J.A.

[1] The appellant challenges a decision of Beaudry J. (judge) of the Federal Court by which the judge dismissed the appellant's application for judicial review.

[2] In its judicial review application, the appellant submitted that the adjudicator, who ruled on the allegedly unlawful dismissal from work of the respondent, had no jurisdiction to hear the matter pursuant to section 88 of the *Indian Act*, R.S.C. 1985, c. I-15. Such jurisdiction belonged to

provincially appointed adjudicators since labour relations are primarily governed by provincial laws.

[3] The appellant also contended before the judge that the adjudicator's decision was patently unreasonable.

[4] The judge refused to decide the constitutional issue on the basis that there were not sufficient constitutional facts on the record to enable him to decide it. He went on to dismiss the appellant's claim that the arbitrator's decision was patently unreasonable. The appellant has not appealed against this last finding.

[5] We are of the view that the judge committed no reviewable error in making his finding on the constitutional issue. The appellant did not object to the jurisdiction of the arbitrator. It is only in its challenge of the arbitrator's decision that it raised the issue for the first time. Being the applicant in the judicial review proceedings, the appellant bore at least the evidentiary burden of filing evidence to support its allegation regarding the lack of competence of the adjudicator.

[6] In other words, the appellant was alleging that its business or services do not come within the definition of a Federal undertaking, work or business. It had in its hands all the necessary facts that could sustain its allegation. It was its obligation to provide sufficient evidence as to the nature of its operations, that is to say, as to the jurisdictional facts necessary for a proper determination of the constitutional issue.

[7] The respondent seeks an award of solicitor-client costs. We refuse his demand. However, in the exercise of our discretionary power under Rule 400 of the *Federal Courts Rules* and considering that the appellant failed to raise its objection before the adjudicator, to issue a notice of constitutional question in its proceedings before the Federal Court, to file appropriate evidence of constitutional facts and that such failures have led to multiple proceedings extending over a period of more than four years, the respondent should be awarded increased costs, i.e. the maximum number of units under Column V of the table to Tariff B.

[8] The appeal will be dismissed with costs as provided above.

“Gilles Létourneau”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-92-07

STYLE OF CAUSE: SPORTS INTERACTION v. TREVOR JACOBS

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: December 12, 2007

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DÉCARY J.A.
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DELIVERED FROM THE BENCH BY: LÉTOURNEAU J.A.

APPEARANCES:

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Me Chantal Poirier FOR THE RESPONDENT

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