

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20091217

Docket: A-182-09

Citation: 2009 FCA 376

**CORAM: SEXTON J.A.
EVANS J.A.
SHARLOW J.A.**

BETWEEN:

MOHAMMAD ASLAM CHAUDHRY

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on December 9, 2009.

Judgment delivered at Ottawa, Ontario, on December 17, 2009.

REASONS FOR JUDGMENT BY:

EVANS J.A.

CONCURRED IN BY:

SEXTON J.A.
SHARLOW J.A.

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REASONS FOR JUDGMENT

EVANS J.A.

[1] This is an application for judicial review by Mohammad Aslam Chaudhry requesting the Court to set aside a decision of the Public Service Labour Relations Board (2009 PSLRB 39), dated March 25, 2009. In that decision, a single member of the Board, Mr. Ian R. McKenzie, rejected Mr Chaudhry's application under subsection 43(1) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22 ("PSLRA"), for a reconsideration of a Board decision, dated July 13, 2005, dismissing his unfair labour practice complaint.

[2] That complaint alleged that the employer had threatened Mr Chaudhry with the loss of his job if he filed a grievance. Mr Chaudhry did not apply for judicial review of the Board's dismissal of his complaint.

[3] In the decision under review in this proceeding, the Board refused to exercise its discretion to reconsider its 2005 decision. The Board held that, in the circumstances, it was unreasonable for Mr Chaudhry to have delayed requesting a reconsideration for three and a half years. The Board went on to consider Mr Chaudhry's request on its merits and concluded that it was unmeritorious, because he had adduced no new evidence or advanced no argument that his representative could not, with reasonable diligence, have adduced or advanced before the Board in 2005.

[4] In addition, the Board found that the "new argument" questioning the delegated authority of the official responsible for terminating his employment in 2004 through rejection on probation was more relevant to Mr Chaudhry's grievance regarding his termination than to his unfair labour practice complaint. The grievance had been heard Mr Mackenzie in his capacity as an Adjudicator, at the same time that he heard the complaint as a Board member. Mr Chaudhry unsuccessfully applied for judicial review of the Board's dismissal of his grievance. Since grievance decisions of Adjudicators appointed under the PSLRA are not decisions of the Board, they are not subject to reconsideration under section 43.

[5] The Board's exercise of its discretion to reject a request for reconsideration because of delay by the applicant is reviewable in this Court on the standard of reasonableness. Having read the

Board's careful reasons for concluding that Mr Chaudhry had unduly delayed requesting a reconsideration, we are not persuaded that the Board's decision was unreasonable. It took into account relevant factors: the importance of finality of Board decisions; the length of the delay (despite the absence of a prescribed limitation period in section 43); and Mr Chaudhry's explanations of it. It is also relevant to note that nothing "new" came to light or occurred during the period of the delay that was not reasonably discoverable in 2005, and that Mr Chaudhry's "new" argument was, at best, of only peripheral relevance to the complaint.

[6] Since the Board's rejection of the request for reconsideration on the ground of delay was not unreasonable, it is not necessary to consider the Board's findings on the merits of Mr Chaudhry's request.

[7] Finally, Mr Chaudhry argues that a Board member other than Mr Mackenzie should have determined his request for reconsideration, because of a reasonable apprehension that, as the original decision-maker, Mr Mackenzie would not determine the reconsideration impartially.

[8] I do not agree. A request for reconsideration under section 43 of the PSLRA is neither an appeal nor a request for a redetermination. Rather, it is a limited exception to the finality of the Board's decisions which enables the decision-maker to revisit the decision in the light of fresh evidence or a new argument.

[9] For these reasons, the application will be dismissed with costs.

“John M. Evans”

J.A.

I agree.

K. Sharlow J.A.

I agree

J. Edgar Sexton J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-182-09

STYLE OF CAUSE: Mohammad Aslam Chaudhry
and
The Attorney General of Canada

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 9, 2009

REASONS FOR JUDGMENT BY: Evans J.A.

CONCURRED IN BY: Sexton and Sharlow J.J.A.

DATED: December 17, 2009

APPEARANCES:

Mohammad Aslam Chaudhry

APPLICANT ON HIS OWN
BEHALF

Karl Chemsí

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT