

Federal Court of Appeal



Cour d'appel fédérale

Date: 20101216

Docket: A-394-10

Citation: 2010 FCA 346

[ENGLISH TRANSLATION]

Present: MAINVILLE J.A.

BETWEEN:

**LES SERVICES DE SANTÉ CLAUDE GERVAIS INC.,
ENTREPRISE DAVID TAN INC., GESTION NOURA A. SHAHID INC.,
GESTIONS FORTIER-ALLAN INC., 2321-5510 QUÉBEC INC.,
9186-9750 QUÉBEC INC., 9013-5617 QUÉBEC INC., 2970-9177 QUÉBEC INC.,
139273 CANADA INC., 9199-8468 QUÉBEC INC. AND
ENTREPRISES JAMI ELATE, 7302622 CANADA INC.**

Applicants

and

**CANADIAN UNION
OF POSTAL WORKERS**

Respondent

and

**CANADA POST CORPORATION
PHARMAPRIX INC. AND
SHOPPERS DRUG MART INC.**

Respondents

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

Order delivered at Ottawa, Ontario, on December 16, 2010.

REASONS FOR ORDER:

MAINVILLE J.A.

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INC., 139273 CANADA INC., 9199-8468 QUÉBEC INC. AND ENTREPRISES JAMI
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REASONS FOR ORDER

MAINVILLE J.A.

[1] The applicants submitted a motion to amend their application for judicial review of a decision of the Canada Industrial Relations Board dated September 22, 2010, bearing citation 2010 CIRB LD 2426, in order to add the Attorney General of Canada, Canada Post Corporation,

Shoppers Drug Mart Inc., Pharmaprix Inc., Les Entreprises Kim Luu Inc., Les Gestions Magdi Tebechrani Inc., 9183-0067 Québec Inc., Gestion Sylvain Goudreault Inc., 9159-8532 Québec Inc., Gestion Lucap Inc., 9070-4701 Québec Inc., Carophil Inc., Gestion Lise Hamel-Chartrand Inc., Gestion Riteal Inc. and La Corporation de Gestion E.A. Michot, 9186-9750 Québec Inc., Gestion Christian Duguay Inc., 9195-9965 Québec Inc., 2955-7196 Québec Inc. Gestions V. Mauriello Inc., Les Gestions Syl-Von Inc., Pharmacie Majed Bitar, Entreprises AD Sidera Inc., and Tarek El-Gharib.

[2] The respondent, the Canadian Union of Postal Workers, or the companies and businesses concerned, did not file a reply to this motion.

[3] For the reasons that follow, I will only allow part of the motion to add Canada Post Corporation, Shoppers Drug Mart Inc., and Pharmaprix Inc. to the proceedings.

[4] This order will be without effect on the right of another company or business concerned by the motion to file, if it deems it appropriate, a notice of motion for leave to intervene in this proceeding.

Background

[5] The background of the motion is drawn from the decisions of the Canada Industrial Relations Board (the “CIRB”) filed with the affidavit submitted in support of the motion.

[6] On February 26, 2010, the Canadian Union of Postal Workers (the “Union”) simultaneously filed five applications for certification pursuant to section 24 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the “Code”) and five applications for a single employer declaration pursuant to section 35 of the *Code*. The Union is seeking to be certified to represent employees who work at the postal counters of various Pharmaprix franchises in a given geographic area. The applicants are involved in two CIRB files, 27977-C and 27981-C, while the companies and businesses concerned by the motion are involved in three other CIRB files, 27978-C, 27979-C and 27980-C.

[7] On March 11, 2010, Canada Post Corporation filed a preliminary objection at the CIRB seeking to have the Union’s applications denied on the ground that they did not meet the requirements of the *Canada Industrial Relations Board Regulations*, SOR/2001-520. On March 16, 2010, Pharmaprix filed a preliminary objection on the same basis, specifying that it was impossible for it to determine the scope of the single employer applications filed by the Union, since these applications did not specify which employers were contemplated. The other employers in the five other files at issue subscribed to this preliminary objection.

[8] The preliminary objection in the five files at issue was dismissed by the Board in a decision dated June 14, 2010, bearing citation 2010 CIRB LD 2369. The Board therefore returned all five files to proceed with the hearing.

[9] Several of the companies and businesses involved applied for a review of this decision in accordance with section 18 of the Code. The application for review was dismissed by the CIRB in its decision dated September 22, 2010, bearing citation 2010 CIRB LD 2426.

[10] The applicants are seeking the judicial review of this latest decision in this proceeding. Neither Canada Post Corporation, nor Pharmaprix Inc., who made the preliminary objection before the Board in the five files at issue, joined the applicants in the application for judicial review. The same applies to the employers involved in the three other files before the CIRB.

[11] However, in the applicants' notice of application for judicial review, they added all these employers as "Interested Parties" to the proceedings. According to the affidavit submitted in support of the motion, the Registry staff allegedly refused to include these other employers in the proceedings [TRANSLATION] "on the basis that employers were described as interested parties, rather than respondents, in the style of cause of the notice of application" (Affidavit of Shawn Connelly at paragraph 2).

Analysis

[12] I note that the Attorney General of Canada did not participate in the proceedings before the CIRB and that there was no reason submitted by the applicant to justify why he was added as a respondent. I further note that there is no proof of service of the motion record on the Attorney General of Canada in the record. In these circumstances, it is appropriate to dismiss the applicants' motion with respect to the Attorney General of Canada.

[13] With regard to the other companies and businesses contemplated by the motion, they are not challenging the CIRB's decision. There is therefore *res judicata* in respect to them in files 27978-C, 27979-C, and 27980-C of the CIRB, to which the applicants are not party. These companies and businesses did not apply for a judicial review of the CIRB's decision in the files that concern them, and I do not see any interest for the proper administration of justice to force them to participate without their consent in the proceedings brought by the applicants.

[14] Moreover, the applicants did not show why the presence of these companies and businesses would be necessary to ensure a full trial and the resolution of the issues in this proceeding. These companies and businesses are not directly affected by the two CIRB files involving the applicants, 27977-C and 27981-C, and they therefore do not have to be designated as respondents in the application for judicial review brought by the applicants.

[15] If one of these companies or businesses is of the opinion that it should nevertheless participate in the proceeding, it should file a notice of motion in accordance with Rule 109 of the *Federal Courts Rules*, SOR/98-106 for leave to intervene. If applicable, it must explain in what manner it wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding. The Court, if it grants such a motion, could then make the leave subject to appropriate conditions in particular regarding the role of the intervener and the procedure to follow.

[16] However, Canada Post Corporation, Pharmaprix Inc. and Shoppers Drug Mart Inc. are employers involved in CIRB files 27977-C and 27981-C, which directly concern the applicants. Considering this fact, even if these companies do not challenge the CIRB decision at issue, they are nonetheless, within the meaning of Rule 303(1)(a) of the *Federal Courts Rules*, persons directly affected by the order sought by the applicants in their application for judicial review. In fact, the outcome of files 27977-C and 27981-C before the CIRB is in part connected to this Court's eventual decision with respect to the application for judicial review.

[17] Canada Post Corporation, Pharmaprix Inc., and Shoppers Drug Mart Inc. will therefore be named as respondents on the application for judicial review, as required by Rule 303(1)(a) of those Rules.

[18] Since there is a very good chance that the interests of the respondent in this proceeding, the Canadian Union of Postal Workers, differ from the interests of these companies, and considering the fact that these companies did not challenge the CIRB decision at issue before this Court, or otherwise participate in this motion, it is appropriate to set out some specific provisions in order to ensure that this hearing is managed in a fair and equitable manner.

[19] Rule 3 of the *Federal Court Rules* requires that these Rules be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits. Rule 53 allows the Court, in making an order, to impose such conditions and directions as it

considers just, while Rule 55 allows the Court, in special circumstances, to vary a rule or dispense with compliance with a rule.

[20] Accordingly, the following provisions will apply to manage the participation of Canada Post Corporation, Pharmaprix Inc., and Shoppers Drug Mart Inc. in this proceeding in a fair and equitable manner:

- a. within 10 days of this order, each one of the companies must serve and file a notice of appearance if it intends to participate in the proceeding; given the date of this order, the Christmas recess not be included in the computation of this 10-day period, similar to what is provided in subsection (3) of Rule 6;
- b. if a company fails to appear, the company concerned will be deemed to no longer be participating in the proceeding;
- c. these companies will not file any affidavit or documentary evidence in this proceeding;
- d. each of these companies, in the respondent's record, will limit the memorandum of fact and law to a maximum of 10 pages;
- e. the other parties will serve on these companies all the affidavits, documentary evidence, files, applications, motions, and other procedures within the time and in the manner provided in the Rules for a respondent.

[21] The style and cause of this proceeding will henceforth be the style and cause of the order following these reasons.

“Robert M. Mainville”

J.A.

FEDERAL COURT OF APPEAL
NAMES OF COUNSEL AND SOLICITORS OF RECORD

Docket: A-394-10

STYLE OF CAUSE: LES SERVICES DE SANTÉ
CLAUDE GERVAIS INC.,
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QUÉBEC INC. AND
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7302622 CANADA INC

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER: MAINVILLE J.A.

DATED: DECEMBER 16, 2010

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