

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20111013

Docket: A-430-10

Citation: 2011 FCA 280

**CORAM: SEXTON J.A.
STRATAS J.A.
MAINVILLE J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 2228**

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondents

Heard at Ottawa, Ontario, on October 12, 2011.

Judgment delivered at Ottawa, Ontario, on October 13, 2011.

REASONS FOR JUDGMENT BY:

SEXTON J.A.

CONCURRED IN BY:

**STRATAS J.A.
MAINVILLE J.A.**

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REASONS FOR JUDGMENT

SEXTON J.A.

[1] The Attorney General of Canada applies for judicial review from a decision dated October 15, 2010 of the Public Service Labour Relations Board. The decision arose out of an application to the Board made by the respondent International Brotherhood of Electrical Workers, Local 2228. It

applied for an order under section 58 of the Public Service Labour Relations Act that an incumbent in a particular position in the employers' Technical Services Group should be in the bargaining unit that covers the employers' Electronics Group. The Board granted the order.

[2] All parties are agreed that the standard of review of the Board's decision is reasonableness. Therefore, our task is to determine whether the outcome reached by the Board falls within a range of outcomes that is defensible and acceptable on the facts and the law. This is a deferential standard.

[3] In assessing whether the Board's decision is reasonable, we must bear in mind certain features that make this case an unusual one. The application before the Board was ill-worded: literally read, it asked that a certain position be included in the employer's Electronics Group. Of course, section 58 does not empower the Board to place positions elsewhere in the employer's job structure. But no objection to the application was made, and the parties proceeded on the understanding that the Board's task was to assess to which bargaining unit a particular incumbent in a position should belong. Another unusual feature is that, as the Board noted at paragraph 64 of its decision, the incumbent in issue in this application was not called as a witness. Therefore, the best source of information concerning the duties and responsibilities of the incumbent – namely, the incumbent himself – was not available to the Board.

[4] In paragraphs 62-63 and 75 of its decision, the Board charged itself as to the appropriate legal principles to be applied in an application under section 85 of the Act. Before us, no objection was made to these aspects of the Board's decision.

[5] However, before this Court, objection was taken to the manner in which it applied these principles to the facts before it. It is alleged that the Board disregarded evidence of witnesses and fastened onto an expert witness's analysis, which was said to be inconsistent with the principles to be applied under section 85 of the Act.

[6] In my view, these objections are based on an overly fine and technical reading of the Board's decision. The Board's decision was not worded as precisely as it might have been. But, when viewed against the difficulties mentioned in paragraph 3, above, and when the Board's decision is read in its entirety, including the lengthy passages setting out witnesses' testimony which included the actual duties and responsibilities of the incumbent, I cannot say that the Board's decision is unreasonable. In my view, the Board followed the appropriate principles, ascribed weight to the various pieces of evidence before it, made factual findings, and then reached overall conclusions based on those principles and findings that are defensible and acceptable.

[7] It is true that the Board's order is not worded as precisely as it might have been, in that it speaks of positions rather than bargaining units. Perhaps this is because the Board's order followed the ill-wording of the relief sought in the application. But the parties do understand what the Board's order means. Therefore, I see no reason to change the wording of the Board's order.

[8] Therefore, I would dismiss the application with costs.

“J. Edgar Sexton”

J.A.

“I agree
David Stratas J.A.”

“I agree
Robert M. Mainville J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-430-10

**AN APPLICATION FOR JUDICIAL REVIEW OF THE PUBLIC SERVICE LABOUR
RELATIONS BOARD DATED OCTOBER 15, 2010, FILE NO. 547-02-14**

STYLE OF CAUSE: Attorney General of Canada v.
International Brotherhood of
Electrical Workers, Local 2228
and Public Service Alliance of
Canada

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 12, 2011

REASONS FOR JUDGMENT BY: Sexton J.A.

CONCURRED IN BY: Stratas J.A.
Mainville J.A.

DATED: October 13, 2011

APPEARANCES:

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