

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120404

Docket: A-414-11

Citation: 2012 FCA 107

**CORAM: BLAIS C.J.
PELLETIER J.A.
MAINVILLE J.A.**

BETWEEN:

CANADA POST CORPORATION

Appellant

and

**CANADIAN UNION OF POSTAL WORKERS
and ATTORNEY GENERAL OF CANADA**

Respondents

Judgment delivered at Ottawa, Ontario, on April 4, 2012, on written submissions of the parties.

REASONS FOR JUDGMENT BY:

MAINVILLE J.A.

CONCURRED IN BY:

BLAIS C.J.
PELLETIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT

MAINVILLE J.A.

[1] By its motion filed on December 7, 2011, and amended on March 9, 2012, the Attorney General of Canada (“AGC”) seeks the dismissal of the Canada Post Corporation’s appeal, alleging that it is moot.

[2] The appeal concerns the order of Justice Martineau of the Federal Court dated October 20, 2011, citation 2011 CF 1207 (the “Stay Order”), in which the Honourable Coulter A.

Osborne was ordered to suspend the arbitration and to take no action or make any decision in his capacity as the arbitrator for final offer selection appointed by the Minister of Labour (“Minister”) under the *Restoring Mail Delivery for Canadians Act*, S.C. 2011, c. 17, until the Federal Court made a final decision on the application for judicial review filed by the Canadian Union Of Postal Workers (“Union”). In its application for judicial review, the Union asked the Federal Court (a) to cancel the appointment of the Honourable Mr. Osborne as arbitrator on the grounds of his lack of experience in labour relations and his unilingualism and (b) to limit the powers of the Minister in relation to the appointment of a new arbitrator.

[3] Within days of Justice Martineau’s Stay Order, the Honourable Mr. Osborne resigned as arbitrator. The AGC therefore submits that the appeal from this order is now moot and should be dismissed.

[4] In its [TRANSLATION] “Amended Written Submissions” dated March 9, 2012, the AGC explains that Justice Martineau rendered a judgment on January 30, 2012, cited as 2012 FC 110 (the “Final Judgment”), by which he allowed in part the Union’s application for judicial review, quashed the Minister’s decision to appoint the Honourable Mr. Osborne as arbitrator, and ordered the Minister to take into account a number of factors when appointing a new arbitrator, notably that she ensure that the new arbitrator have some degree of recognized labour relations experience and be bilingual. The AGC adds that this judgment was not appealed. Indeed, the time limit for instituting such an appeal has now elapsed.

[5] The Canada Post Corporation and the Union are challenging the AGC's motion, but their challenges were filed before the time limit to appeal the Final Judgment had elapsed. They have not replied to the AGC's amended motion. They have therefore not provided the Court with their comments on the impact of the Final Judgment on this appeal.

[6] I would have hesitated to allow the AGC's motion on the ground raised in his initial motion, namely the mootness of the appeal given that the Honourable Mr. Osborne has resigned. Indeed, the appeal concerning the Stay Order could have proceeded despite this resignation since the Final Judgment had not yet been rendered. Consequently, the dispute was then alive, the issues were then important, and there was uncertainty about how the matter would continue. Moreover, on January 30 of this year, Justice Martineau refused to allow a similar motion filed by the AGC (Final Judgment, at paragraphs 6 to 15), and the AGC did not appeal this ruling.

[7] However, the Final Judgment now renders moot the appeal from the Stay Order. Taking into account the factors established in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, there are, moreover, no reasons justifying the exercise of this Court's discretion to hear the appeal despite its mootness.

[8] Indeed, in light of the Final Judgment, there is no longer an adversarial context between the parties regarding the questions raised by this appeal. Moreover, there are no longer any important questions at stake in this appeal, since these were resolved by the Final Judgment.

Concern for judicial economy therefore strongly favours refusing to exercise the Court's discretion to hear the appeal from the Stay Order despite its mootness.

[9] Even though the AGC's motion should be allowed, the particular circumstances of this appeal and of the proceedings before this Court and the Federal Court favour a special order as to costs. The AGC's motion, in its original form, did not really have any merit. The present appeal only became moot when the Final Judgment was issued and the time to appeal that judgment had elapsed. In these circumstances, the other parties had to respond to the AGC's premature motion and incurred costs to do so. In these circumstances, the Union and the Canada Post Corporation should be awarded their costs in the motion even if it is allowed. The Union should also be awarded costs in the appeal.

[10] In conclusion, I would allow in part the Attorney General of Canada's amended motion, dismiss the appeal from the Stay Order for reasons of mootness resulting from the Final Judgment rendered by Justice Martineau in this matter, and award costs as set out above.

“Robert M. Mainville”

J.A.

“I concur.

Pierre Blais C.J.”

“I concur.

J.D. Denis Pelletier J.A.”

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:

A-414-11

STYLE OF CAUSE:

Canada Post Corporation v.
Canadian Union of Postal Workers
and Attorney General of Canada

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF THE PARTIES

REASONS FOR ORDER BY:

MAINVILLE J.A.

DATED:

April 4, 2012

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