

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120904

Docket: A-117-11

Citation: 2012 FCA 228

**CORAM: NOËL J.A.
SHARLOW J.A.
STRATAS J.A.**

BETWEEN:

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Applicant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

Heard at Ottawa, Ontario, on September 4, 2012.

Judgment delivered from the Bench at Ottawa, Ontario, on September 4, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120904

Docket: A-117-11

Citation: 2012 FCA 228

CORAM: NOËL J.A.
SHARLOW J.A.
STRATAS J.A.

BETWEEN:

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Applicant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on September 4, 2012)

STRATAS J.A.

[1] This is an application for judicial review of a decision of the Public Service Labour Relations Board dated February 8, 2011: 2011 PSLRB 16. In that decision, Vice-Chair Pineau determined what was to be included in an essential services agreement, pursuant to subsection 123(1) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22.

[2] The applicant challenges the decision on procedural and substantive grounds.

[3] First, the applicant submits that a site visit conducted by the Vice-Chair was done without jurisdiction.

[4] We disagree. In our view, the Vice-Chair had the implicit jurisdiction to conduct a site visit, in light of the other functions and powers given under the Act: *Chrysler Canada Ltd. v. Canada (Competition Tribunal)*, [1992] 2 S.C.R. 394.

[5] The applicant also alleges that the site visit was procedurally unfair in that counsel for the applicant (not counsel before us) could not attend. Further, the representatives of the applicant who did attend the site visit could not overhear the conversation of the Vice-Chair during the site visit or understand the language she was using (French). The short answer to these is that it is incumbent on a party to make timely objections to procedural defects. Here, the applicant did not make any timely objections.

[6] The applicant also submits that the Vice-Chair improperly used the results of the site visit as evidence in the proceeding rather than just to further her understanding of the evidence. We have not been convinced that the Vice-Chair did anything other than use the site visit as an opportunity to better understand the evidence.

[7] The applicant also submits that the Vice-Chair's decision cannot withstand scrutiny under the reasonableness standard of review because of the absence of evidence on certain key points, such as the nutritional indispensability of meat to the Canadian diet.

[8] We consider the Vice-Chair's decision to be reasonable. In paragraph 116 of its decision, the Vice-Chair cites the Board's decision in *Canada (Treasury Board) v. PSAC*, PSLRB File No. 181-02-99, in which the relevant legal test is set out. Before us, the applicant recognized this as the proper test. The test is whether the duties would be "reasonably...required to prevent or guard against the probability or even the rational possibility of harm or injury to the health or physical well-being of individuals." From there, the Vice-Chair makes a number of factual findings in paragraphs 117-135 of her decision. Taken together, those findings support her conclusion, a conclusion that is defensible on the facts and the law, and, therefore, reasonable.

[9] Finally, we do not accept that the order made by the Vice-Chair was overbroad in light of the terms of subsection 123(3) and the factual context in which the order was made.

[10] Therefore, despite the able submissions of Mr. Rootham, counsel for the applicant, we shall dismiss the application with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-117-11

APPLICATION FOR JUDICIAL REVIEW OF THE DECISION OF THE PUBLIC SERVICE LABOUR RELATIONS BOARD DATED FEBRUARY 8, 2011

STYLE OF CAUSE: Professional Institute of the Public Service of Canada v. Canadian Food Inspection Agency

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: September 4, 2012

REASONS FOR JUDGMENT OF THE COURT BY: Noël, Sharlow, Stratas JJ.A.

DELIVERED FROM THE BENCH BY: Stratas J.A.

APPEARANCES:

Christopher Rootham FOR THE APPLICANT

Caroline Engmann FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nelligan O'Brien Payne LLP FOR THE APPLICANT
Ottawa, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada