



Cour d'appel fédérale

Date: 20200129

Docket: A-295-19

Citation: 2020 FCA 29

[ENGLISH TRANSLATION]

CORAM: PELLETIER J.A.

BOIVIN J.A. GLEASON J.A.

BETWEEN:

MARITIME EMPLOYERS ASSOCIATION MONTREAL PORT AUTHORITY SHIPPING FEDERATION OF CANADA

Applicants

and

LONGSHOREMEN'S UNION, LOCAL 375 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

CHAMBRE DE COMMERCE DE L'EST DE MONTRÉAL

CONSEIL DU PATRONAT DU QUÉBEC

FÉDÉRATION DES CHAMBRES DE COMMERCE DU QUÉBEC

Respondents

Heard at Ottawa, Ontario, on January 29, 2020.

Judgment delivered at Ottawa, Ontario, on January 29, 2020.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

Federal Court of Appeal



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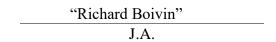
Respondents

REASONS FOR JUDGMENT OF THE COURT (Delivered from the Bench at Ottawa, Ontario, on January 29, 2020.)

BOIVIN J.A.

- [1] This is an application for judicial review of a decision rendered by the Canada Industrial Relations Board (the Board) on August 21, 2019 (2019 CIRB 909).
- [2] By that decision, the Board dismissed the applicants' application for recusal of a Board member, namely, Gaétan Ménard, who was on the panel dealing with the underlying application respecting the maintenance of essential activities.
- [3] The applicants submit that the Board erred in that [TRANSLATION] "the cumulative effect" of member Ménard's comments, actions and omissions gave rise to a reasonable apprehension of bias.
- [4] We are unanimously of the opinion that the Board did not err in its reasoned decision, as it examined the issued raised and, more specifically, the comments and actions alleged in the case under consideration.
- [5] Firstly, the Board correctly stated that the burden of demonstrating an apprehension of bias on the part of a member of the Board panel is on the party who alleges that apprehension of bias, that is, the applicants, as members of a quasi-judicial administrative tribunal are presumed to be impartial. Secondly, the Board also properly directed itself in law in applying the test to establish a reasonable apprehension of bias as propounded in *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369 at pages 394–395.

- [6] As the Board stated, although member Ménard's conduct during the hearing was regrettable, we are also of the opinion that the conduct complained of in this case does not support a finding of reasonable apprehension of bias, for substantially the same reasons. That being said, we must add that member Ménard's conduct, which included constantly whispering and leaning on his chair while disinterestedly staring out the window, is unacceptable. This conduct in no way sets an example of decorum and professionalism for a Board hearing.
- [7] The application for judicial review will therefore be dismissed, with costs.



Certified true translation François Brunet, Revisor

FEDERAL COURT OF APPEAL

COUNSEL OF RECORD

DOCKET: A-295-19

STYLE OF CAUSE: MARITIME EMPLOYERS

ASSOCIATION, and MONTREAL PORT

AUTHORITY, and SHIPPING FEDERATION OF CANADA v.

LONSHOREMEN'S UNION, LOCAL 375

OF THE CANADIAN UNION OF

PUBLIC EMPLOYEES, and

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, and CHAMBRE DE

COMMERCE DE L'EST DE MONTRÉAL, and CONSEIL DU PATRONAT DU QUÉBEC, and FÉDÉRATION DES CHAMBRES DE

COMMERCE DU QUÉBEC

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 29, 2020

REASONS FOR JUDGMENT OF THE

COURT BY:

PELLETIER J.A. BOIVIN J.A. GLEASON J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

APPEARANCES:

Nicola Di Iorio FOR THE APPLICANT Mélanie Sauriol MARITIME EMPLOYERS

Geneviève Beaudin ASSOCIATION

Michel Brisebois FOR THE APPLICANT

Georges Samoisette Fournier MONTREAL PORT AUTHORITY

Jean-Denis Boucher FOR THE APPLICANT

SHIPPING FEDERATION OF CANADA

Marie-Christine Morin FOR THE RESPONDENT

Jacques Lamoureux LONGSHOREMEN'S UNION,

LOCAL 375 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES

Dominic Caron FOR THE RESPONDENT

INTERNATIONAL

LONGSHOREMEN'S ASSOCIATION

COUNSEL OF RECORD:

BCF LLP FOR THE APPLICANTS
Montreal, Quebec MARITIME EMPLOYERS

ASSOCIATION and

MONTREAL PORT AUTHORITY

Robinson Sheppard Shapiro L.L.P FOR THE APPLICANT

Montreal, Quebec SHIPPING FEDERATION OF CANADA

Lamoureux Morin avocats inc. FOR THE RESPONDENT

Longueuil, Quebec LONGSHOREMEN'S UNION,

LOCAL 375 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES

Pink Larkin FOR THE RESPONDENT

Montreal, Quebec INTERNATIONAL LONGSHOREMEN'S

ASSOCIATION