

Federal Court of Appeal



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 issues 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.

“Richard Boivin”

J.A.

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.

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