

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200514

Docket: A-275-19

Citation: 2020 FCA 87

**CORAM: STRATAS J.A.
WEBB J.A.
MACTAVISH J.A.**

BETWEEN:

BRIAN ST. HILAIRE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on May 14, 2020.

REASONS FOR ORDER BY:

MACTAVISH J.A.

CONCURRED IN BY:

**STRATAS J.A.
WEBB J.A.**

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REASONS FOR ORDER

MACTAVISH J.A.

[1] On July 22, 2019, Brian St. Hilaire commenced an application for judicial review of a decision of the Federal Public Sector Labour Relations and Employment Board. Because a requisition for hearing was not filed within 180 days of the commencement of the application, this Court issued a Notice of Status Review on January 22, 2020. Mr. St. Hilaire was given 30 days in which to provide representations explaining why this matter should not be dismissed for delay. He was also required to provide a proposed timetable for the completion of the steps

necessary to advance the proceeding in an expeditious manner. The respondent was given 10 days in which to respond.

[2] It appears from the parties' submissions that there was an initial delay in this matter that resulted from Mr. St. Hilaire's attempt to examine at least one of his co-workers in writing in accordance with the provisions of Rule 99 of the *Federal Courts Rules*, S.O.R./98-106. The respondent refused this request on the basis that the co-worker had not provided an affidavit in this proceeding. Mr. St. Hilaire persisted with his request, ultimately seeking Directions from this Court as to his entitlement to examine the individual in question.

[3] On October 9, 2019, Justice Rennie issued a Direction confirming that Rule 99 "does not apply in the circumstances of a judicial review where no affidavits have been filed". He further noted that "[t]he parties are entitled to cross-examine on affidavits, once filed". Despite being told by a judge of this Court that he was not entitled to examine his co-worker, Mr. St. Hilaire made four further requests in October of 2019 to examine the individual in question. Little else appears to have happened in this matter between the time that Justice Rennie issued his Direction on October 9, 2019 and the Notice of Status Review was issued on January 22, 2020.

[4] When faced with a status review, a party must address two questions. The first is whether there is a justification for the failure to move the case forward, and the second is what measures the party proposes to take to move the case forward: *Liu v. Matrikon Inc.*, 2010 FCA 329, 413 N.R. 188 at para. 2, *Baroud v. Canada (Minister of Citizenship & Immigration)* (1998), 160 F.T.R. 91 (T.D.).

[5] As the applicant, Mr. St. Hilaire bears the burden of moving this case forward: *Cotirta v. Missinippi Airways*, 2012 FC 1262, 45 Admin. L.R. (5th) 255 at para. 15, 2012 FC 1262, aff'd 2013 FCA 280. While he did respond to the Notice of Status Review, Mr. St. Hilaire has not provided a satisfactory explanation to justify his delay in pursuing this matter. His "explanation" for the delay essentially consists of a series of allegations with respect to the alleged "evasive action" on the part of the respondent in failing to produce witnesses for examination.

[6] Nor has Mr. St. Hilaire provided a proposed timetable for the completion of the steps necessary to advance the proceeding in an expeditious manner. Rather, he submits that "[i]n order to advance the Proceedings and arrive at a timely, truthful disposition of this action, immediate direction by the Court to the Respondent for all information currently being evaded or omitted for any reason". With respect, this is an unsatisfactory response, particularly in light of the fact that Mr. St. Hilaire has already been told by this Court that he is not entitled to the information that he seeks.

Conclusion

[7] In light of the foregoing I would dismiss this application for judicial review, with costs.

"Anne L. Mactavish"

J.A.

"I agree
David Stratas J.A."

"I agree
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-275-19

STYLE OF CAUSE: BRIAN ST. HILAIRE v.
ATTORNEY GENERAL OF
CANADA

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: MACTAVISH J.A.

CONCURRED IN BY: STRATAS J.A.
WEBB J.A.

DATED: MAY 14, 2020

WRITTEN REPRESENTATIONS BY:

Brian St. Hilaire ON HIS OWN BEHALF

Julie Chung FOR THE RESPONDENT
Sean Kelly

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada