

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131126

Docket: A-307-12

Citation: 2013 FCA 274

**CORAM: BLAIS C.J.
NOËL J.A.
GAUTHIER J.A.**

BETWEEN:

BARRINGTON TERMINALS LIMITED

Applicant

and

**HALIFAX LONGSHOREMEN'S ASSOCIATION,
ILA LOCAL 269**

and

HALIFAX EMPLOYERS ASSOCIATION

Respondents

Heard at Ottawa, Ontario, on November 26, 2013.

Judgment delivered from the Bench at Ottawa, Ontario, on November 26, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on November 26, 2013).

GAUTHIER J.A.

[1] This is an application for judicial review of a decision [2012 CIRB LD 2825] of the Canada Industrial Relations Board (the Board) dismissing Barrington Terminals Limited's (Barrington) application for reconsideration under section 18 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 of

the Board's decision [2011 CIRB 612] declaring the applicant to be engaged in longshoring work and therefore subject to the geographic certification held by the Halifax Longshoremen's Association, ILA Local 269 (ILA).

[2] In our view, the Board did not commit any reviewable error in dismissing Barrington's application for reconsideration. A fair reading of the Board's reasons demonstrates that Barrington's application for reconsideration was dismissed on the ground of timeliness alone.

[3] More specifically, the Board states in the first paragraph of its analysis:

The application for reconsideration is clearly untimely, and should be dismissed on that ground alone. However, as the applicant continues to resist the conclusion reached by the Board in [2011 CIRB] 612, the Board will address the merits of the arguments it has raised in its application.
[emphasis added]

[4] The position taken by Barrington before the Board on this issue was that the Board had an obligation to be correct in its interpretation of the regulatory requirements, failing which it places Barrington in potential violation of other statutes.

[5] In its response before the Board, ILA took the position, among other things, that Barrington, through new counsel, was essentially attempting to re-litigate the initial decision under the guise of a motion for reconsideration.

[6] In our view, it was open to the Board to dismiss Barrington's application by reason of the fact that it was untimely.

[7] The Board's further comments on the merits of the application are *obiter* and need not be addressed by this Court as they could not justify our intervention. This is especially so when one considers that Barrington did not apply for judicial review of the Board's initial decision before this Court.

[8] For these reasons, the application will be dismissed with costs to ILA only.

“Johanne Gauthier”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-307-12

STYLE OF CAUSE:

BARRINGTON TERMINALS
LIMITED v. HALIFAX
LONGSHOREMEN'S
ASSOCIATION, ILA LOCAL 269
AND HALIFAX EMPLOYERS
ASSOCIATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: NOVEMBER 26, 2013

REASONS FOR JUDGMENT OF THE COURT BY: BLAIS C.J.
NOËL J.A.
GAUTHIER J.A.

DELIVERED FROM THE BENCH BY:

GAUTHIER J.A.

APPEARANCES:

JOHN H. (JACK) GRAHAM, Q.C.

FOR THE APPLICANT
BARRINGTON TERMINALS
LIMITED

RONALD A. PINK, Q.C.

FOR THE RESPONDENTS
HALIFAX LONGSHOREMEN'S
ASSOCIATION, ILA LOCAL 269

SCOTT STERNS

FOR THE RESPONDENTS
HALIFAX EMPLOYERS
ASSOCIATION

SOLICITORS OF RECORD:

MCINNES COOPER
Halifax, Nova Scotia

PINK LARKIN
Halifax, Nova Scotia

MERRICK JAMIESON STERNS WASHINGTON &
MAHODY
Halifax, Nova Scotia

FOR THE APPLICANT
BARRINGTON TERMINALS
LIMITED

FOR THE RESPONDENTS
HALIFAX LONGSHOREMEN'S
ASSOCIATION, ILA LOCAL 269

FOR THE RESPONDENTS
HALIFAX EMPLOYERS
ASSOCIATION