

Raeburn v. Canada (Labour Relations Board)

Ian Raeburn, Anne Bateman and Rajinder Pandher, on behalf of certain employees of Atomic Transportation Systems Inc., Applicants v. Canada Labour Relations Board and Teamsters Local Union No. 31, Respondents

Federal Court of Canada, Appeal Division

Strayer, MacGuigan, Linden J.J.A.

Oral reasons: May 3, 1995

Docket: Doc. A-40-94

Counsel: *William B. McAllister, Q.C. Lisa Ridgeway*, for Applicants.

Jeanne Meyers, for Respondent - Teamsters Local Union No. 31.

Victor Leginsky, for Respondent - Canada Labour Relations Board.

Subject: Labour and Employment

Labour Law --- Bargaining rights — Practice and procedure — Notice

Employees not receiving notice of judicial review.

Employees opposed the unionization of their workplace and called for a vote in letters, which was evidenced in letters sent to Canada Labour Relations Board. In a prior decision, Board had ordered that a vote be taken. The vote was decided against the union and led to a dismissal of the certification application by a panel of Board. Board had before it the letters of employees. The union sought a reconsideration and notice was given to the employer, but not to employees. A full Board later unanimously reversed the decision of the earlier panel. Employees applied for judicial review. Held, the application was allowed. The decision of Board was set aside. A notice to persons concerned or who might be affected by the application was necessary and was in accordance with the principles of natural justice.

***Linden, J.A.* reasons for judgment:**

1 The sole issue to be determined is whether the applicants were entitled to notice of an application for reconsideration about whether or not the respondent union would be granted certification without a vote.

2 In the prior decision of the Board dated July 9, 1993, it was ordered that a vote be taken. This vote was decided against the union which led to the dismissal of the certification application by a panel of the Board. The panel had before it letters sent by the applicants opposing the unionization of their workplace and calling for a vote. In its reasons, the panel indicated that in arriving at its decision, it had reviewed all the documentation on file, presumably including the letters of the applicants.

3 Following this decision of the panel, the union sought a reconsideration and notice of this reconsideration was given to the employer, but not to these applicants, the Board having felt that they were not entitled to such notice pursuant to section 37 of the regulations because they were neither parties nor intervenors.

4 On December 24, 1993, the full Board, which included the three members who composed the original panel, unanimously reversed the decision of the earlier panel and certified the union on the basis that the panel had departed from the established policy of the Board.

5 This Court, as required by the jurisprudence of the Supreme Court of Canada, gives deference to the decisions of senior administrative tribunals. Specifically, the *Canada Labour Code*, section 22, makes clear that this Court is limited in reviewing decisions of the Canada Labour Relations Board; it can do so only on grounds set out in section 18.1(4)(a)(b) or (e) of the *Federal Court Act*. The applicable words in this case are:

... (b) "failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe" ...

6 One of the bedrock principles of natural justice, invariably embedded in regulations, is that individuals whose rights may be affected by legal proceedings have the right to receive notice of those proceedings and to make representations in them. (See *Okanagan Helicopters Ltd. v. Canadian Helicopter Pilots' Association*, [\[1986\] 2 F.C. 56](#) ((F.C.A.) per Hugessen J.A. at p. 65; *Appleton v. Eastern Provincial Airways Ltd.*, [\[1984\] 1 F.C. 367](#) (F.C.A.) per C.J. Thurlow, at p. 371; *Hoogendoorn v. Greening Metal Products and Screening Equipment Co. et al.*, [\[1968\] S.C.R. 30](#)). This right is not dependent on legislative language, but springs from the common law of natural justice, which is usually incorporated into legislation.

7 While we have not been persuaded that these applicants were "parties" or "intervenors" in these proceedings, a status that would have guaranteed their right to notice (see s. 37), we are, nevertheless, of the view that they were entitled to receive notice of the reconsideration taking place so that they could make representations. This conclusion is based both on the common law of natural justice as well as on section 10 of the regulations pursuant to the *Canada Labour Code*. This right exists whether or not these representations would make any difference to the outcome (see *Cardinal v. Director of Kent Institution*, [\[1985\] 2 S.C.R. 643](#)).

8 Section 10 of the regulations and the relevant definitions read as follows:

Sec. 10. (1) Subject to subsection (2), the Registrar shall, on receipt of an application, give notice in writing to any person who is concerned or may be affected by the application.

(2) Where the rights of employees could be affected by an application, the Registrar may, in writing, require an employer or a trade union to do one or both of the following:

(a) immediately post any notices of the application that are provided by the Board, for the period that the Registrar prescribes, in places where those notices are most likely to come to the attention of the employees who are concerned or may be affected by the application; and

(b) inform the employees who are concerned or may be affected by the application of the

filing of the application in the manner that the Registrar directs.

"application" includes any application, complaint, question or dispute made or referred to the Board in writing pursuant to the Act; ...

"person" includes an employer, an employers' organization, a trade union, a council of trade unions, an employee or a group of employees

9 In our view, the application for reconsideration is covered by this section and the definitions. This was an 'application' and these applicants were "persons" who were "concerned" or who "may be affected by the application". They were not only ordinary employees but they were employees who had written to the Board, expressing their opposition, and requesting that a vote be taken. They were vitally concerned with the proceeding and their interests would undoubtedly be affected by an adverse decision. They had reason to believe that their representations had been heeded and that the matter had concluded favourably to their interests. To their surprise, they then learned on January 7, 1994, that the full Board, unbeknownst to them, had reconsidered the decision, had arrived at the opposite conclusion and had certified the union. In the circumstances of this particular case, this was both a violation of the principles of natural justice and of regulation 10, requiring this Court to intervene.

10 This does not mean, of course, that the Board's effort to bring consistency to its decision-making is not worthwhile. Nor does it imply that the Board is not entitled to take the "snapshot" approach to union membership. This decision does not interfere with the Board's discretion to order a vote or to refrain from doing so. It only requires that they do so fairly and according to the principles of natural justice, so that notice in circumstances like these to those concerned or affected by the application is necessary.

11 Section 37 of the regulations, requiring notice to parties and intervenors in cases of reconsideration is no impediment to this conclusion. It is aimed at the reconsideration of erroneous decisions and those contrary to the policies of the Board, and assures notice to parties and intervenors. But there is nothing in the section to override section 10 of the regulations, which covers all applications, and which is more in harmony with the jurisprudence of natural justice in relation to notice.

12 This application will be allowed, and the decision of the Board dated December 24, 1993, with reasons dated May 16, 1994, will be set aside.