Date: 20080123

Docket: T-643-07

Citation: 2008 FC 81

[ENGLISH TRANSLATION]

Montréal, Quebec, on January 23, 2008

PRESENT: Richard Morneau, Esq., Prothonotary

BETWEEN:

MARITIME EMPLOYERS ASSOCIATION

Applicant

and

HER MAJESTY THE QUEEN OF CANADA
(HUMAN RESOURCES AND SOCIAL DEVELOPMENT CANADA)

and

SYNDICAT DES DÉBARDEURS S.C.F.P.
SECTION LOCALE 375

and

ASSOCIATION INTERNATIONALE DES DÉBARDEURS,
ILA, SECTION LOCALE 1657

and

LOGISTEC STEVEDORING INC.

and

MONTREAL GATEWAY TERMINALS PARTNERSHIP

and

TERMONT MONTRÉAL INC.

and

EMPIRE STEVEDORING CO. LTD.

and

CERESCORP INC.

Respondents

REASONS FOR ORDER AND ORDER

[1] This is a motion by the respondent, the Attorney General of Canada, to strike several other respondents from the style of cause on the grounds that they essentially espouse the views and remedies sought by the applicant (MEA). Thus, according to the Attorney General of Canada, these respondents, LOGISTEC STEVEDORING INC., MONTREAL GATEWAY TERMINALS PARTNERSHIP, TERMONT MONTRÉAL INC., EMPIRE STEVEDORING CO. LTD. and CERESCORP INC. (the respondents), are not genuine respondents in this case because their interests are not different or opposed to those of the MEA.

[2] In the alternative, if these respondents retain their standing in this case, the Attorney General of Canada requests that some of the conclusions raised by these respondents in their factum on the merits be struck, since these conclusions are different from those sought by the MEA in its application for judicial review (the MEA's application), and the respondents themselves did not initiate an application for judicial review.

Background

[3] It appears that the respondents are all stevedoring companies located in the Port of Montréal where they operate loading and unloading terminals. For this purpose they employ auditors and longshoremen.

[4] The respondents are all members of the MEA. The MEA sees itself as an association of longshoremen employers working in the Port of Montréal and would be named as the employer representative for the purposes of Part I of the *Canada Labour Code*, R.S.C., 1985, c. L-2, (the Code), by decision of the Canada Industrial Relations Board under section 34 of the Code.

[5] Within the meaning of the Code, the MEA would therefore constitute an employer representative deemed to be an employer empowered to bargain collectively on behalf of employers who are truly active in longshoring at the Port of Montréal, namely the respondents. The MEA itself would therefore not perform any stevedoring or freight forwarding activities.

[6] On April 18, 2007, the MEA filed its motion to challenge what it sees as a unique new approach taken by the Health and Safety Division of Human Resources and Social Development Canada (HRSDC) (the federal authorities), which considers that it, the MEA, and not the respondents, is the employer within the meaning of Part II of the Code.

[7] According to the MEA, longshoremen at the other ports in Canada are correctly named as employers with respect to Part II of the Code, which was apparently the case at the Port of Montréal prior to adoption of the new approach mentioned above.

[8] Through its application, the MEA is essentially seeking not to be named as an employer for purposes of Part II of the Code.

[9] On September 17, 2007, the respondents and the respondent, the Attorney General of Canada, served and filed their respective factums.

[10] In this regard, pursuant to their factum, the respondents are asking this Court to grant the orders sought by the MEA.

[11] In addition, the respondents also formulated conclusions in their factum, that is, conclusions 73(b) and (c), which the Attorney General of Canada sees as their own and go beyond what the MEA has requested. These conclusions read as follows:

a) Declare void HRSDC's pledge of voluntary compliance provided to the applicant on April 4, 2007;

b) Declare that the respondents are the longshoremen's employers assigned to their respective operations, for the purposes of Part II of the *Canada Labour Code*.

Analysis

[12] Paragraph 303(1)(*a*) of the *Federal Courts Rules* (the Rules) requires that the applicant for judicial review name as a respondent every person directly affected by the order sought in the application. As mentioned in *Richards Packaging Inc. v. Canada (Attorney General)*, 2006 FC 257, at paragraph 13 (*Richards Packaging*):

> [13] (…) In other words, a person who will be directly affected by the outcome of the decision to be rendered on an application shall be named as a respondent.

[13] Paragraph 303(1)(*a*) of the Rules reads as follows:

303.(1) Respondents – Subject to sub-section (2), an applicant shall name as a respondent every person	303.(1) Défendeurs – Sous réserve du paragraphe 2, le demandeur désigne à titre de défendeur :
(*a*) directly affected by the order sought in the application, other than a tribunal in respect of which the application is brought; or	*a*) toute personne directement touchée par l'ordonnance recherchée, autre que l'office fédéral visé par la demande;

[14] Here, there is no doubt that the decision to be rendered on the MEA's application will directly affect the respondents, as they argue in paragraph 24 of their written submissions:

> (…) the decision will determine who, among the respondents and the applicant, will be responsible for ensuring the health and safety of longshoremen within the Port of Montréal.

[15] Because the MEA initiated the application, it had no choice. It had to include the respondents in the style of cause under the terms of paragraph 303(1)(*a*) of the Rules. It is also difficult to conclude in this case that, in April 2007, the respondents could have presented themselves as applicants in an application for judicial review of a decision that was not addressed to them.

[16] In addition, there are no grounds here to draw this conclusion based on the case law where this paragraph could have been viewed in conjunction with Rules 104 or 109 since in this matter (unlike cases such as *Richards Packaging* and *Nu-Pharm Inc. v. Canada (Attorney General)* (2001), 14 C.P.R. (4th) 280 and the decision reviewed in it, *Merck & Co.* v. *Canada (Attorney General)* (1993), 48 C.P.R. (3d) 54) the respondents are already included in the style of cause and therefore do not seek to be included by motion.

[17] Finally, it is true that the final outcome may be perplexing in that the respondents are seeking to have the MEA's application granted. However, it is clear here that the Attorney General of Canada intends to fully exercise his role as respondent and that, based on the merits, the Court will understand the dynamics surrounding the respondents' presence in this capacity.

[18] The principal remedy sought by the Attorney General of Canada, the striking of the respondents and their factum, will therefore be dismissed.

[19] With respect to the conclusions of the same respondents in paragraph 73(b) and (c) of their factum (*supra*, paragraph [11]), I agree with the Attorney General of Canada that as respondents in an application for judicial review, these respondents cannot directly or indirectly seek orders against the Attorney General of Canada that are not claimed by the only party authorized to do so, here the MEA (in this regard, see the Federal Court of Appeal's decision *GKO Engineering v. Canada*, 2001 FCA 73, at paragraph 3, and the application of this decision in *Canada (Attorney General) v. Pépin*, 2006 FC 950, at paragraphs 29 and 30).

[20] Although it may be admitted that the respondents' conclusions 73(b) and (c) in some way complement in practice conclusions 84(a) and (b) formulated by the MEA in its factum on the merits, said conclusions 73(b) and (c) do, however, add aspects or components that are not explicitly claimed by the MEA. In that sense, it is therefore not for the respondents in an application for judicial review to seek or provide any conclusions that the MEA itself does not claim.

[21] It will therefore be ordered that paragraphs 73(b) and (c) shown on page 74 be considered struck from the respondents' factum on the merits.

[22] Since success is divided on this motion, no costs will be awarded.

ORDER

The principal remedy sought by the Attorney General of Canada, the striking of the respondents and their factum, is dismissed.

It is also ordered that paragraphs 73(b) and (c) shown on page 74 be considered struck from the respondents' factum on the merits.

Since success is divided on this motion, no costs are awarded.

"Richard Morneau"
Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-643-07

STYLE OF CAUSE: MARITIME EMPLOYERS ASSOCIATION
Applicant
and
HER MAJESTY THE QUEEN OF CANADA
(HUMAN RESOURCES AND SOCIAL DEVELOPMENT CANADA)
SYNDICAT DES DÉBARDEURS S.C.F.P.
SECTION LOCALE 375
ASSOCIATION INTERNATIONALE DES DÉBARDEURS,
ILA, SECTION LOCALE 1657
LOGISTEC STEVEDORING INC.
MONTREAL GATEWAY TERMINALS PARTNERSHIP
TERMONT MONTRÉAL INC.
EMPIRE STEVEDORING CO. LTD.
CERESCORP INC.
Respondents

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 21, 2008

REASONS FOR ORDER: PROTHONOTARY MORNEAU

DATED: January 23, 2008

APPEARANCES:

André C. Giroux	FOR THE APPLICANT
Nadine Perron Nadia Hudon	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA
Philippe C. Vachon	FOR THE RESPONDENTS LOGISTEC STEVEDORING INC., MONTREAL GATEWAY TERMINALS PARTNERSHIP, TERMONT MONTRÉAL INC., EMPIRE STEVEDORING CO. LTD., And CERESCORP INC.

SOLICITORS OF RECORD:

Ogilvy Renault Montréal, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA
Borden Ladner Gervais Montréal, Quebec	FOR THE RESPONDENTS LOGISTEC STEVEDORING INC., MONTREAL GATEWAY TERMINALS PARTNERSHIP, TERMONT MONTRÉAL INC., EMPIRE STEVEDORING CO. LTD., And CERESCORP INC