

Federal Court



Cour fédérale

**Date: 20110505**

**Docket: T-612-11**

**Citation: 2011 FC 528**

**Ottawa, Ontario, May 5, 2011**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**CANADA POST CORPORATION**

**Applicant**

**and**

**CANADIAN UNION OF POSTAL WORKERS**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] A motion was brought by the Applicant to stay the decision of an Appeals Officer of the Occupational Health and Safety Tribunal Canada, confirming a decision to amalgamate a separate health and safety committee for the Rural and Suburban Mail Carriers (RSMC) onto the National Joint Health and Safety Committee (NJHSC) for employees in the Urban Postal Operations group (UPO). The relief sought by the moving party is to keep two (2) separate health and safety committees until a final determination of the underlying issues.

[2] The tripartite test for a stay of a decision as expressed in *RJR – MacDonald v Canada (Attorney General)*, [1994] 1 SCR 311 is well set out, wherein the Supreme Court stated that three (3) factors must be assessed by the Court upon motion for a stay: (1) whether there is a serious issue to be tried; (2) whether irreparable harm would result if the stay is not granted; and (3) whether the balance of convenience favours the granting of a stay.

[3] Considering the low threshold for a serious issue to be tried to be found, this aspect of the test is met in the circumstances.

[4] In terms of the “irreparable harm” alleged by the moving party, it can be said that the grounds alleged pertain to administrative inconvenience, augmented workload and logistical hurdles. The moving party cites the following as consequences and harm of the merging of the two (2) committees. It is also argued that the past inefficiencies of the UPO-NJHSC are to be exacerbated in the event of a joining of the committees. The main grounds for irreparable harm alleged are:

- a. There would be a significant increase in the time required for management personnel to prepare for meetings.
- b. Canada Post’s ability to have most knowledgeable members participate in NJHSC discussions would be impeded by the creation of a combined committee.
- c. The vast majority of issues discussed at the UPO-NJHSC have no application to RSMCs.
- d. There is a finite amount of time available for NJHSC meetings. The addition and complexity of RSMC issues in a combined committee setting will result in less time to address RSMC and/or UPO issues.
- e. The UPO-NJHSC is already overworked with respect to the number of issues before it and the time required to deal with those issues.

- f. Issues and inefficiencies have arisen within the UPO-NJHSC: delays in the elaboration of the training packages; communication of information to members; translation of documents; and the alleged bargaining of health and safety training against labour relations issues.

[5] The Federal Court of Appeal held in *Laperrière v D. & A. MacLeod Company Ltd.*, 2010 FCA 84 that mere administrative inconvenience does not constitute irreparable harm. The harm alleged in the present Motion reaffirming that the nature of the harm alleged is not sufficient to prove to be irreparable. Also, the *obiter* in *Laperrière*, above, at paragraph 20, is on point:

Even if “time, energy and money” would be wasted, the appellant has failed to particularize adequately the nature and amount of waste. Indeed, as best as can be determined from the affidavit offered in support of the stay – and the affidavit is unclear on this point – perhaps only a few days of work might be wasted.

[6] Thus, the Court finds that the harm alleged is not irreparable, and for this reason, the tripartite test of *RJR McDonald*, above, is not met.

[7] The Court would, however, like to reaffirm the importance of health and safety committees and the importance of their efficient work as determinative of the safety of employees. The Court encourages both parties to efficiently and in good faith ensure the proper and timely administration of the health and safety committee until final determination of the underlying application.

**ORDER**

**THIS COURT ORDERS that:** the Motion is denied. Costs of this motion shall be in the cause.

“Simon Noël”

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Judge