

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150113

Docket: A-280-14

Citation: 2015 FCA 13

[ENGLISH TRANSLATION]

**CORAM: PELLETIER J.A.
GAUTHIER J.A.
SCOTT J.A.**

BETWEEN:

**SYNDICAT DES COMMUNICATIONS DE
RADIO-CANADA (FNC-CSN)**

Applicant

and

MS. Z

Respondent

and

SOCIÉTÉ RADIO-CANADA

Third Party

Heard at Montréal, Quebec, on January 13, 2015.

Judgment delivered at Montréal, Quebec, on January 13, 2015.

REASONS FOR JUDGMENT BY:

PELLETIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] The standard of review for a decision of the Canada Industrial Relations Board (the Board) is that of reasonableness, as much for questions concerning the interpretation of its own

statute as for questions of fact and questions of mixed fact and law: *Cadieux v. Amalgamated Transit Union*, 2014 FCA 61, at paragraph 23, *Dunsmuir v. Nouveau Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 [*Dunsmuir*].

[2] After hearing all the evidence, the Board found that the union knew as of May 23, 2012, the identity of the person who had filed the sexual harassment complaint against her union representative and that she was part of the same bargaining unit. The complaint was the reason for the union representative's dismissal. This set of circumstances resulted in a conflict of interest in a serious matter between two union members, a conflict that the union had to deal with. In the Board's opinion, the union should have immediately taken the necessary steps to ensure that the case was managed objectively: see paragraphs 78 and 90 of the Board's decision (the Decision). In this context, objectivity required that the union ensure, and assure Ms. Z, that the interests of one member not become subordinate to those of another (see paragraph 90 of the Decision).

[3] The Board noted that "by pursuing the interests of Mr. M to the detriment of the complainant [Ms. Z], failing to take Ms. Z's interests into account and assigning the same persons who represented Mr. M to investigate Ms. Z's allegations, without giving any guarantee of objectivity to the complainant" (paragraph 89 of the Decision), the union did indeed fail in its obligations towards Ms. Z. This failure was reflected in the fact that the union "asked the same individuals who represented Mr. M's interests to conduct the investigation into Ms. Z's case" (paragraph 80 of the Decision).

[4] To be clear, the Board criticized the union for its failure to act immediately to ensure that Ms. Z's viewpoint could be considered in the decision of whether or not to challenge Mr. M's dismissal, without implementing a system to ensure the independence of the investigation into Ms. Z's complaint from the investigation into Mr. M's complaint. This decision is consistent with the Board's line of authority in cases such as *Mr. G.*, 2007 CIRB 399, and *Stolp*, (*1998) 107 di 1.

[5] There is no doubt that this already complex case became even more complex when Ms. Z filed her own grievance against not only Mr. M and the employer but also the union. In addition, both Ms. Z's and Mr. M's refusal to cooperate with the union did nothing to make things easier. That being said, the Board considered these facts and still concluded that the union failed in its duty to ensure objectivity with respect to Ms. Z.

[6] Given the facts found by the Board and the inferences it drew from these facts and the applicable legislation, this conclusion falls within the range of "possible, acceptable outcomes . . . in respect of the facts and law", *Dunsmuir*, at paragraph 47.

[7] The application for judicial review is dismissed with costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-280-14
STYLE OF CAUSE: SYNDICAT DES
COMMUNICATIONS DE RADIO-
CANADA (FNC-CSN) v. MS. Z
AND SOCIÉTÉ RADIO-CANADA
PLACE OF HEARING: MONTRÉAL, QUEBEC
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REASONS FOR JUDGMENT BY: PELLETIER J.A.
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