

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151125

Docket: A-525-14

Citation: 2015 FCA 265

**CORAM : GAUTHIER J.A.
BOIVIN J.A.
DE MONTIGNY J.A.**

BETWEEN:

**CHRISTIAN BOMONGO
PATRICK KENABANTU**

Applicants

and

UNIFOR AND BELL CANADA

Respondents

Heard at Montreal, Quebec, on November 25, 2015.

Judgment delivered from the Bench at Montreal, Quebec, on November 25, 2015.

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 Montreal, Quebec, on November 25, 2015.)

GAUTHIER J.A.

[1] In their application for judicial review, the Applicants Mr. Bomongo and Mr. Kenabantu challenge the decision of the Canada Industrial Relations Board dismissing their complaint under section 37 of the *Canada Labour Code* (R.S.C. (1985), c. L-2) because the complaint was filed after the deadline and because, in this case, there was no basis for extending the applicable deadline, given the lack of convincing reasons warranting such an extension.

[2] The Applicants base their case on, among other things, a correspondence that they had not submitted to the Board to support that the latter had erred in finding that they were aware, no later than May 23, 2013, of the material facts in the complaint as expressed and submitted on July 23, 2014. The applicable timeframe for filing that complaint was 90 days.

[3] The law is well settled: in general, judicial review of the legal validity of a decision is carried out on the basis of the record as it stands before the administrative decision-maker. No recognized exception to that principle applies here and, therefore, we cannot take into account the new evidence filed by the Applicants.

[4] That being said, we note that the Applicants also applied for reconsideration of their complaint, citing that new evidence. Their application was dismissed by the Board, which found that, among other things, that evidence would not have altered the decision that is the subject of the current application because it simply reiterates that the union refused to continue the adjudication of the Applicants' grievances in the absence of adequate cooperation from them. That decision regarding reconsideration was not challenged.

[5] The Board's decision, as set out in paragraph 1 herein, is subject to the standard of reasonableness.

[6] The Applicants have failed to satisfy us, in the matter of their complaint as expressed and the documentation before the Board, that the latter's finding that their complaint was past the

deadline was not one of the acceptable potential outcomes with respect to the facts and the applicable law.

[7] Contrary to what the Applicants claim in their brief, the Board considered whether there was some basis for extending the deadline despite the lack of an application from them in that regard. In the light of the circumstances in this case, it was reasonable for the Board to conclude that an extension was not warranted.

[8] The application for judicial review will be dismissed with costs set at a lump sum of \$1,000 (taxes and disbursements included).

“Johanne Gauthier”

J.A.

Certified true translation
François Brunet, Revisor

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-525-14

STYLE OF CAUSE: CHRISTIAN BOMONGO,
PATRICK KENABANTU V.
UNIFOR AND BELL CANADA

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: NOVEMBER 25, 2015

REASONS FOR JUDGEMENT OF THE COURT BY: GAUTHIER J.A.
BOIVIN J.A.
DE MONTIGNY J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

APPEARANCES:

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