

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151118

Docket: A-118-15

Citation: 2015 FCA 259

**CORAM: DAWSON J.A.
RYER J.A.
WEBB J.A.**

BETWEEN:

NORTHERN AIR SOLUTIONS INC.

Applicant

and

**UNITED FOOD AND COMMERCIAL
WORKERS CANADA, LOCAL 175**

Respondent

Heard at Toronto, Ontario, on November 18, 2015.
Judgment delivered from the Bench at Toronto, Ontario, on November 18, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on November 18, 2015)

RYER J.A.

[1] This is an application for judicial review of a decision of the Canadian Industrial Relations Board (the “Board”), dated February 10, 2015 and cited as 2015 CIRB 773, granting the application by United Food and Commercial Workers International Union, Local 175 for

certification as the bargaining agent for certain employees of Northern Air Solutions Inc. (“Northern Air” or the “Applicant”).

[2] Northern Air provides interprovincial and international air ambulance and charter airline services to the public. It holds a Transport Canada air operating certificate and an Ontario Ministry of Natural Resources air ambulance operating certificate.

[3] The Board found that it had jurisdiction over the certification application in respect of Northern Air’s employees in both its air charter and air ambulance services, under section 4 of the Canada Labour Code, R.S.C. 1985, c L-2 (the “Code”), on the basis that such employees were employed in a federal work, undertaking or business as defined in section 2 of the Code.

[4] In this appeal, Northern Air asserts that the Board erred in its determination that it had jurisdiction over the certification application.

[5] The standard of review with respect to matters of constitutional interpretation is correctness. However, factual findings that underpin the constitutional analysis are reviewed on the deferential standard of reasonableness. See *Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters*, 2009 SCC 53, [2009] 3 S.C.R. 407, at paragraph 26, where Justice Rothstein states “... factual findings regarding the operations and organizational structure of Fastfrate merit deference.”

[6] In this Court, the Applicant asserts that the Board erred by failing to make any finding as to whether Northern Air had a single business or two separate businesses, an airline business and an air ambulance business, thereby erring in its application of the functional test as enunciated in *Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail)*, [2012] 2 SCR 3.

[7] While the Board did not explicitly state that Northern Air operated a single business, no other conclusion can be discerned from its reasons:

- At paragraph 32, the Board stated that it was to examine the nature of the employer's operations, not the role of any specific employees in those operations.
- At paragraph 33, the Board determined that aircraft were used in providing all of its services, including air ambulance services.
- At paragraph 37, the Board found that the unique character of the air ambulance services is transportation of patients by airplane.
- At paragraph 38, the Board found that the habitual activity of Northern Air is air transportation and that the circumstances of its passengers – holiday goers or sick people – does not alter the conclusion that it is in the business of providing air transportation.

[8] These portions of the Board's reasons show that it reached the conclusion that Northern Air had a single business of air transportation.

[9] This factual conclusion on the part of the Board was open to it on the evidence in the record before it. As such, we can discern no reviewable error on the part of the Board in reaching this conclusion.

[10] The Applicant also asserts that the Board erred in finding that the use of aircraft was determinative of the functional test. In our view, the Board made no such finding. Rather, its conclusions with respect to the role of aircraft in the operations of Northern Air were factual findings that were open to it. Indeed, it is hard to quarrel with a finding that one cannot operate an air ambulance service without an airplane.

[11] In conclusion, it is our view that the Board's finding that the employees engaged in its charter airline and air ambulance services were employed in the operation of a federal work, undertaking or business, within the meaning of section 2 of the Code, is supportable on the basis of the record.

[12] For these reasons, the application for judicial review is dismissed with costs.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-118-15

APPEAL FROM A JUDICIAL REVIEW OF DECISION OF GINETTE BRAZEAU AS CHAIRPERSON OF CIRB, DECISION DATE FEBRUARY 10, 2015, DOCKET/ORDER NO. 10733-U.

STYLE OF CAUSE: NORTHERN AIR SOLUTIONS
INC. v. UNITED FOOD AND
COMMERCIAL WORKERS
CANADA, LOCAL 175

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: NOVEMBER 18, 2015

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
RYER J.A.
WEBB J.A.

DELIVERED FROM THE BENCH BY: RYER J.A.

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