Federal Court of Appeal | Cour d'appel fédérale

Date: 20151216

Docket: A-200-15

Citation: 2015 FCA 287

CORAM: **NADON J.A.**
TRUDEL J.A.
SCOTT J.A.

BETWEEN:

LA COOPERATIVE DE TRANSPORT MARITIME ET AÉRIEN

Applicant

and

UNITED STEELWORKERS, LOCAL 9538

Respondent

Heard at Québec, Quebec, on December 16, 2015.

Judgment delivered from the Bench at Québec, Quebec, on December 16, 2015.

REASONS FOR JUDGMENT OF THE COURT BY: TRUDEL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Québec, Quebec, on December 16, 2015.)

TRUDEL J.A.

[1] In a decision dated March 19, 2015, the Canada Industrial Relations Board (the Board) determined that the level of ferry service to be maintained between Cap-aux-Meules and Souris in the event of a strike or lockout would be three times a week. The applicant, the Coopérative de

transport maritime et aérien (the Co-operative), brought an application for judicial review before this Court to have the Board's decision set aside.

[2] It is not disputed that since then, on July 24, 2015, the parties settled their labour dispute by signing a collective agreement and a return-to-work protocol.

[3] At the hearing on the merits of this application, the respondent, United Steelworkers, Local 9538 (the Union), filed a supplementary memorandum in which it argued that, in the light of the settlement of the labour dispute after the Board's impugned decision, the application was now moot and should be summarily dismissed.

[4] The applicant submits that the case is not moot and that the challenged decision sets a bad precedent. It argues that the Board asked itself the wrong question, as appears from paragraph 113 of its reasons. The applicant is of the opinion that this Court should remind the Board of its role when an application is made to it under section 87.4 of the *Canada Labour Code*, R.S.C. 1985, c. L-2, and of the two-step process it must follow under subsections (6) and (8). In short, we are to remind the Board that it must comply with the *Canada Labour Code*.

[5] It is our intention to decline that invitation. In our view, paragraph 113 of the Board's reasons is more consistent with a comment written in *obiter* than with reasons supporting its final decision. Furthermore, agreeing to the request by counsel for the applicant would amount to giving the Board a legal opinion on the alleged errors of law in the Board's reasons.

[6] *Joseph Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, is a leading case as to the doctrine on mootness. Although it was decided in a criminal law context, the principles that emerge from it have been applied in civil matters (see *Association des pharmaciens des établissements de santé du Québec c. Conseil des services essentiels*, AZ-01021398; D.T.E. 2001T-345, affirmed on appeal AZ-04019603). As that case ruled, the approach to take when determining whether a dispute has become moot is a two-step process. First, the Court must decide whether, at the time the Court must render a decision, the required tangible and concrete dispute has disappeared, rendering the issues academic. Second, and despite an affirmative answer at the first stage, the Court must decide whether or not it will nonetheless decide the moot issue or issues.

[7] In the present case, we are all of the opinion that there is no concrete dispute between the parties since the labour dispute that led to the Board's decision no longer exists. The parties can no longer resort to pressure tactics that bring the notion of essential services into play because there is now a new collective agreement governing their labour relations.

[8] That being said, we note the numerous issues raised on the merits by the applicant in its memorandum of fact and law, issues that go far beyond the Board's mere ruling on the number of ferry crossings to be made per week. Exercising our discretion, we choose not to answer these questions: (a) it cannot be said that both parties still have an interest in the dispute; (b) it is not worthwhile to devote judicial resources to resolving an appeal that has become moot; and (c) this Court's intervention would not serve the interests of justice.

[9] The application for judicial review will, therefore, be dismissed with costs.

"Johanne Trudel"

J.A.

Certified true translation
François Brunet, Revisor

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-200-15
STYLE OF CAUSE:	LA COOPERATIVE DE TRANSPORT MARITIME ET AÉRIEN v. UNITED STEELWORKERS, LOCAL 9538
PLACE OF HEARING:	QUÉBEC, QUEBEC
DATE OF HEARING:	DECEMBER 16, 2015
REASONS FOR JUDGMENT OF the COURT BY:	NADON J.A. TRUDEL J.A. SCOTT J.A.
DELIVERED FROM THE BENCH BY:	TRUDEL J.A.

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