

In the Court of Appeal of Alberta

Citation: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 488 v Radke, 2013 ABCA 436

Date: 20131218

Docket: 1203-0187-AC

Registry: Edmonton

Between:

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 488

Appellant
(Applicant)

- and -

Dennis Radke and Alberta Labour Relations Board

Respondents
(Respondents)

The Court:

**The Honourable Madam Justice Carole Conrad
The Honourable Mr. Justice Frans Slatter
The Honourable Mr. Justice Brian O’Ferrall**

**Memorandum of Judgment
Delivered from the Bench**

Appeal from the Order by
The Honourable Mr. Justice W.V. Hembroff
Dated the 14th day of June, 2012
Filed on the 16th day of August, 2012
(Docket: 1103-16140)

**Memorandum of Judgment
Delivered from the Bench**

O’Ferrall J.A. (for the Court):

Introduction

[1] This is an appeal by a union from a chambers judge’s decision which upheld the unanimous decision of the Alberta Labour Relations Board declaring the appellant union in breach of its statutory duty to fairly represent the employee, the respondent, Dennis Radke.

[2] The union also appeals the chambers judge’s decision upholding the Board’s decision to accept Mr. Radke’s complaint, notwithstanding that the complaint was made more than 90 days after Mr. Radke knew or ought to have known that the union would not be representing him.

[3] Finally the union appeals the chambers judge’s decision to uphold the Board’s direction that a grievance ordered by the Board to be filed by the union on Mr. Radke’s behalf proceed directly to arbitration.

Standard of Review

[4] Decisions of this nature by the Labour Relations Board are owed deference when the Board’s reasons provide justification for the decision, wherein the justification is transparent and intelligible and where the decision itself falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

Decision

[5] We are of the view that there is no reviewable error in the Labour Relations Board’s conclusion that the union’s handling of the respondent’s grievance did not comply with its duty of fair representation. It was not the role of the chambers judge, nor is it the role of this Court, to revisit the issue on the merits. The Board gave reasons why the duty of fair representation was not met and that conclusion was available to it on the facts found in the record and the applicable law.

[6] With respect to the timeliness of the employee Mr. Radke’s complaint, the Labour Relations Board has the discretion to accept complaints made more than 90 days after the employee knew or ought to have known that his or her union would not be representing him or her. In this case, the Board gave cogent reasons why it accepted the respondent Mr. Radke’s complaint. The chambers judge was correct in finding that the Board’s reasons were reasonable and the chambers judge’s failure to make an express ruling on the admissibility of an affidavit tendered at the judicial review does not affect that conclusion. The failure to formally rule on the admission of the affidavit evidence, while problematic, does not warrant appellate intervention because the evidence was an unnecessary supplement to the record of the proceedings before the Board in that

it consisted of no more than a reiteration or a repeat of the union's evidence and arguments before the Board.

[7] Finally, with respect to the Labour Relations Board's direction that Mr. Radke's grievance proceed directly to arbitration, the choice of remedy is within the discretion of the Board and, while other remedies may have been available to it on this record, the selection of this particular remedy does not disclose reviewable error.

[8] This appeal is dismissed.

Appeal heard on September 04, 2013

Memorandum filed at Edmonton, Alberta
this 18th day of December, 2013

O'Ferrall, J.A.

Appearances:

M.J. Field
for the Appellant

S.M. Renouf, Q.C. & S. Desbarats
for the Respondent Dennis Radke

G.M. Hope
for the Respondent Alberta Labour Relations Board