

CANADA / JUDGMENT

Sandvoss v. BC Labour Relations Board

2020 BCSC 540

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Supreme Court of British Columbia

DECIDED

6 April 2020

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2020 BCSC 540 Sandvoss v. BC Labour Relations Board

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sandvoss v. BC Labour Relations Board,

2020 BCSC 540

Date: 20200406

Docket: S1956514

Registry: Prince George

Between:

Cheryl Marie Sandvoss

Petitioner

And

BC Labour Relations Board

Respondent

Before: The Honourable Mr. Justice Tindale

Reasons for Judgment

In Chambers

Petitioner appearing in person:

C.M. Sandvoss

Counsel for respondent:

Counsel for Teamsters Local Union No. 31:

Counsel for Prince George Transit Ltd.:

J. O'Rourke

R. Kearns

C. Koperski

Place and Date of Hearing:

Prince George, B.C.

October 21 & 22, 2019

Place and Date of Judgment:

Prince George, B.C.

April 6, 2020

- [1] The petitioner Cheryl Marie Sandvoss pursuant to a notice of application filed September 18, 2019 seeks an extension of the time for filing a petition for judicial review.
- [2] The application respondent the BC Labour Relations Board (the "Board") is opposed to this application.
- [3] The application respondents Teamsters Local Union No. 31 (the "Union") and Prince George Transit Ltd. ("PGT") are also opposed to this application.

Background

- [4] The petitioner was employed with PGT.
- [5] The Union is the sole bargaining agent for the employees of PGT.
- [6] On September 4, 2017 the petitioner's husband Mike Sandvoss suffered a heart attack. He was admitted to the University Hospital of Northern British Columbia. Later he was transported to the Kelowna General Hospital.
- [7] On September 11, 2017 the petitioner became aware of a medical appointment for her husband in Kelowna on October 11, 2017.
- [8] On September 19, 2017 the petitioner completed an Application for Change form provided by PGT in an effort to obtain four days off between October 10 and 13, 2017.
- [9] On September 22, 2017 PGT denied the petitioner's request for time off. The reason given by PGT was that there were "too many operators off" at that time.
- [10] The petitioner did not attend work for her scheduled shifts between October 10 and 12, 2017.

- [11] On October 17, 2017 PGT suspended the petitioner for 10 days for insubordination (the "Suspension").
- [12] On November 6, 2017 the petitioner filed a grievance with the Union as a result of the Suspension.
- [13] An arbitration was set for July 17, 2018 to resolve the issues between the petitioner and PGT.
- [14] The petitioner received a Medical Certificate of Employment Insurance Compassionate Care Benefits which was dated February 6, 2018. The petitioner received Employment Insurance Benefits for work that she missed because of her obligations to assist her husband. The petitioner did not receive these benefits for the 10 days that she was suspended.
- [15] On July 5, 2018 PGT made an offer to settle the Suspension with the Union (the "Offer").
- [16] The Offer from PGT was:
- i. The 10 day suspension would be reduced to a three day suspension;
 - ii. PGT would pay the equivalent of seven days wages to the petitioner;
 - iii. The three day suspension would be removed from the petitioner's personnel file on July 5, 2019 provided no further similar misconduct occurred; and
 - iv. there would be a restriction on the petitioner's ability to discuss the settlement.
- [17] The Union sent the Offer to the petitioner. The petitioner advised the Union that she rejected the Offer.
- [18] On July 6, 2018 the Union advised the petitioner that they accepted the Offer.
- [19] On October 3, 2018 the petitioner applied under s. 12 of the Labour Relations Code, R.S.B.C. 1996, c. 244 (the "Code") alleging that the Union's representation offer of her was arbitrary and done in bad faith.
- [20] On November 8, 2018 the Board dismissed the petitioner's application under s. 12 of the Code: Board decision BCLRB No. B165/2018 (the "Original Decision").
- [21] On November 14, 2018 and December 3, 2018 the petitioner filed what amounted to an application requesting leave and reconsideration of the Original Decision.
- [22] On December 17, 2018 the Board denied the petitioner's request for leave and reconsideration of the Original Decision: Board decision BCLRB No. B 182/2018 (the "Reconsideration Decision").
- [23] On August 30, 2019 the petitioner filed the petition in the within action (the "Petition") requesting a judicial review of the Board's Original Decision and Reconsideration Decision.

Issue

[24] The issue on this application is whether the petitioner should be granted an extension of time to file the Petition for judicial review of the Original decision and the Reconsideration Decision.

[25] Section 115.1 (l) of the Code states:

The following provisions of the Administrative Tribunals Act applied to the board:

(l) section 57 [time limit for judicial review];

[26] Section 57 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 ("ATA") states:

- 1) Unless this Act or the tribunal's enabling Act provides otherwise, an application for judicial review of a final decision of the tribunal must be commenced within 60 days of the date the decision is issued.
- 2) Despite subsection (1), either before or after expiration of the time, the court may extend the time for making the application on terms the court considers proper, if it is satisfied that there are serious grounds for relief, there is a reasonable explanation for the delay and no substantial prejudice or hardship will result to a person affected by the delay.

Position of the Parties

Petitioner

[27] The petitioner says that she has a reasonable explanation for requesting an extension of time to file her petition.

[28] The petitioner argues that both the Union and PGT failed to advise her of her rights to compassionate care leave and benefits pursuant to the Employment Standards Act [RSBC 1996] Chapter 113 in a timely fashion.

[29] The petitioner gave written notice to PGT on October 29, 2018 indicating that her last day of work would be November 12, 2018. The petitioner stated the following in part in that written notice:

My rights for both absence and privacy under the ESA Compassionate Care Benefits were contravened by the 10 day suspension in October 2017. I feel that I have been subjected to ongoing intimidation at the workplace during the grievance process and later, during the arbitration settlement because I would not agree to sign the legal document indemnifying both PWT and Teamsters #31 from further action regarding the contravention of the ESA CCB (July 5th, 2018 settlement accepted by the Teamsters to reduce the suspension to 3 days with a total of 21 months of discipline). I have never received any compensation for the loss of 10 days of wages.

- [30] The petitioner says that after the Reconsideration Decision was issued she contacted the office of the Ombudsperson. She said her file was with the Ombudsperson from January 3, 2019 until July 3, 2019 at which time they informed her they could not assist her. The petitioner argues that had they responded to her by the end of February she could have filed her petition for judicial review in time.
- [31] The petitioner argues that she was not aware that the time limit to file the Petition was running while she had a file open with the Office of the Ombudsperson.
- [32] The petitioner argues that it was not fair that a settlement was imposed on her by the Union.
- [33] The petitioner argues that she had no choice but to quit as a result of the treatment she received from the Union and PGT.
- [34] The petitioner argues that had she been informed about her rights to compassionate care leave none of this would have happened. The petitioner argues that she in fact demonstrated to PGT that she was justified in her absence from work as a result of her husband's medical condition.

The Board

- [35] The Board argues that all three criteria set out in s. 57 of the ATA must be met in order for the petitioner to be successful on her application.
- [36] The Board argues that it is the Original Decision which is the subject of judicial review and it is not whether the Union advised the petitioner of her rights to compassionate care benefits.
- [37] The Board argues that the question to be answered is whether or not the Original Decision is patently unreasonable. The petitioner must establish serious grounds for relief.
- [38] The Board argues that they have exclusive jurisdiction over the complaints made by the petitioner which are the subject of this matter pursuant to s. 136 and s. 137 of the Code.
- [39] The Board notes that the Reconsideration Decision was issued on December 17, 2018 and the petition was not filed until August 30, 2019 which is 256 days later. The Board argues that the Petition is untimely.
- [40] The Board argues that the petitioner has to show that there are serious grounds for relief. The Board further argues that the petitioner has not shown that there is a reasonable prospect that the Petition will succeed.
- [41] In *Andrews v. Labour Relations Board of B.C.*, 2005 BCSC 746 the Court stated the following at paras. 13 and 14:

- [13] However, the standard of review by this court on applications under ss. 12 and 141 of the Code is patent unreasonableness. That is an extremely strict and limited test. It is inappropriate for the court to consider whether the Board's decision was wrong. As long as the Board acts within its jurisdiction, it is entitled to be wrong. In order for this court to find that a decision of the Board is patently unreasonable, the decision must be found to be clearly irrational: see *Budgell v. Labour Relations Board*, 2003 BCCA 605.
- [14] In the case at bar, the Board applied the proper test: it considered the appropriate factors; it considered the petitioner's submissions. It decided that the petitioner had not established a *prima facie* case that the Union had breached its duty of fair representation under s. 12. The Board is uniquely qualified to answer that question. I am unable to find that the decision or reconsideration by the Board was patently unreasonable or clearly irrational.

Union

- [42] The Union argues that the Petition does not include submissions that could form the basis of a finding of patent unreasonableness on the part of the Board.
- [43] The Union argues that s. 12 of the Code contains a narrow right of protection: *Judd (Re)*, [2003] B.C.L.R.B.D. No. 63 at para. 26.
- [44] The Union notes that unions generally have a wide range in choosing an appropriate strategy when dealing with a grievance pursuant to s. 12 of the Code.
- [45] In *Judd* the latitude of a union in dealing with grievances pursuant to s. 12 of the Code was discussed at paras. 94 and 95:
- [94] Employees who are considering making a Section 12 complaint should also understand that it is usually to their advantage to cooperate with the Union in the meantime. This does not mean they should refrain from telling the Union about their dissatisfaction-- in fact, it is generally preferable that they speak up at the earliest opportunity to tell the Union specifically what they think is wrong. However, the Board often sees Section 12 complaints where complainants have given the Union an ultimatum concerning their representation; e.g., they will not cooperate with the Union unless it adopts the particular strategy they advocate. This is almost always a mistake. It should be evident from the discussion above that the union has a wide latitude in choosing the appropriate strategy-- it is not up to the individual employee to dictate. It would be a rare situation where any other strategy than that advocated by the grievor would necessarily be arbitrary.
- [95] The same rationale applies to settlement agreements. The grievor does not have a veto over whether or not the grievance should be settled, or what the terms of the settlement ought to be. It is of course best for the union to consult the grievor before agreeing to a settlement, though it is not necessarily required. Ultimately, however, whether to accept the settlement agreement is for the union to decide.

- [46] The Union notes that in the Original Decision the Board considered the petitioner's arguments including her entitlement to compassionate care benefits and leave.
- [47] The Union argues that compassionate care benefits are not the same as compassionate care leave. There is no evidence that she applied for leave.
- [48] The Union notes that the settlement was reasonable.
- [49] The Union notes that there has been a 256 day delay in filing the Petition. The Union argues that even if the time that the petitioner was communicating with the Ombudsperson was not taken into account the delay would still be over 60 days.
- [50] The Union also argues that there is prejudice to them because of the length of this delay. The Union says witnesses' memories fade over time.
- [51] The Union asks that the application be denied.

PGT

- [52] PGT argues that there has been an unreasonable delay in filing the Petition. The Office of the Ombudsperson is a separate body and it was unreasonable for the petitioner to delay these proceedings because she made a complaint to the Office of the Ombudsperson.
- [53] PGT argues that there is no reasonable likelihood that the petitioner will succeed because the standard of patent unreasonableness is a highly deferential standard and there are no serious grounds alleged in the Petition.
- [54] PGT argues that even if the petitioner was eligible for compassionate care leave the fact that she did not attend work without notice to PGT still constituted insubordination.
- [55] PGT argues that the petition should be dismissed.

Decision

- [56] In order to be successful on this application the petitioner must establish the following:

- i. there are serious grounds for relief;
- ii. there is a reasonable explanation for the delay in filing the Petition; and
- iii. no substantial prejudice or harm will result to any person affected by the delay.

- [57] In *Denton v. British Columbia (Workers' Compensation Appeal Tribunal)*, [2016] B.C.J. No. 1409 the Court in considering s. 57(2) of the ATA stated the following at para. 6:

In this regard it is important to recognize the three criteria outlined in s. 57 (2) are separate and distinct. The petitioner must satisfy the court on each of these questions in order to have the court exercise its discretion in her favour and extend the time for applying for a judicial review (see *Ntibarimungu v. Whistler Blackcomb/Intrawest*, 2014 BCSC 1489).

- [58] The standard of review of the Board's Original Decision and Reconsideration Decision by virtue of ss. 136 and 137 of the Code and s. 58 of the ATA is whether or not these decisions are patently unreasonable.
- [59] The Board in the Original Decision considered the petitioner's grievances with regard to her suspension, including her complaints with regard to her entitlement to compassionate care leave and benefits. The Board also considered the petitioner's overtime grievance. The Board after considering the s. 12 complaint as a whole determined that the Union's representation of the petitioner was a neither arbitrary nor carried out in bad faith.
- [60] The Board in the Original Decision after considering the petitioner's arguments, applied the appropriate test and dismissed the s. 12 complaint.
- [61] The Board is uniquely qualified to determine s. 12 complaints. There is nothing patently unreasonable or irrational about the Board's decision in the Original Decision.
- [62] The Reconsideration Decision was pronounced on December 17, 2018 and simply states the following:

The Applicant applies under Section 141 of the Labour Relations Code for leave and reconsideration of BCLRB No. B165/2018. We find the application does not disclose a good, arguable case reviewable error. Accordingly leave is denied: RG Properties Ltd., BCLRB No. B378/2003 (Leave for Reconsideration of BCLRB No. B 252/2003).

- [63] The Board is not required to give fulsome reasons for denying leave for reconsideration under s. 141 of the Code: *Health Sciences Association of British Columbia v. British Columbia (Labour Relations Board)*, 2014 BCSC 23 at para. 34.
- [64] The petitioner has not established that there are serious grounds for relief.
- [65] The Reconsideration Decision was pronounced on December 7, 2018. The Petition was not filed until August 30, 2009.
- [66] The delay in filing the Petition is extensive and significantly beyond the 60 days as allowed pursuant to s. 57 of the ATA.
- [67] I appreciate that the petitioner is a self represented litigant however I cannot accept her explanation for failing to file the Petition in time. The Office of the Ombudsperson is a separate entity from that of the Board. There is no evidence to suggest that the petitioner thought the Office of the Ombudsperson functioned as an appeal body.
- [68] In fact the petitioner has not presented on this application all of the correspondence between herself and the Office of the Ombudsperson.
- [69] The delay in filing the Petition is unreasonable.

Conclusion

[70] I decline to exercise my jurisdiction to grant leave for the late filing of the Petition because the petitioner has not established there are serious grounds for relief or that the delay is reasonable.

[71] The petitioner's application for leave is dismissed.

[72] The Petition is therefore dismissed.

"The Honourable Mr. Justice Tindale"

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