COURT OF APPEAL FOR ONTARIO

CITATION: Cherrier v. Canada (Attorney General), 2019 ONCA 20
DATE: 20190115
DOCKET: C64755

Rouleau, van Rensburg and Roberts JJ.A.

BETWEEN

Yohan Paul Cherrier

Applicant (Appellant)

and

Attorney General of Canada, Canadian Industrial Relations Board, Kevin Burkett

Respondents (Respondent)

Yohan P. Cherrier, acting in person

Stewart Phillips, for the respondent, Attorney General of Canada

Heard: December 12, 2018

On appeal from the order of Justice Douglas K. Gray of the Superior Court of Justice, dated December 7, 2017, with reasons reported at 2017 ONSC 7336, 401 C.R.R. (2d) 202.

REASONS FOR DECISION

[1] The appellant appeals from the dismissal of his application for recognition of seniority by date of hire as a protected right under the *Canadian Charter of Rights and Freedoms*.

[2] As submitted by the appellant, a summary of the history of proceedings leading up to this appeal is useful to understand the context of the appellant's arguments on appeal.

[3] The appellant was formerly employed as a flight attendant by Canadian Airlines International Ltd. ("CAIL"), which merged with Air Canada in January 2000. At the time of the merger, the appellant and other members of the two airlines' cabin crews were represented by the same trade union, Canadian Union of Public Employees. In August 2000, the Canada Industrial Relations Board ("the Board") declared the airlines to be a single employer under the *Canada Labour Code*, R.S.C. 1985, c. L-2 ("the *Code*"). The Board requested under s. 18.1(2)(a) of the *Code* that the parties seek agreement with respect to the determination of the merged bargaining unit and other issues arising from the declaration, which included the issue of seniority integration.

[4] The parties agreed to settle the seniority integration issue in relation to the merged bargaining unit through a mutually agreed upon arbitration process. After the completion of the process over several months, the arbitrator issued a number of awards, which the Board confirmed in 2003. The arbitrator determined that seniority integration of the merged bargaining unit would be on the basis of the members' relative position on the seniority lists rather than on date of hire.

[5] The appellant and many members of the merged bargaining unit strenuously objected to the seniority integration decision. Over many years, the

appellant and others have sought to challenge it through numerous unsuccessful proceedings, including several grievances, applications to the Board seeking reconsideration, complaints to the Canadian Human Rights Commission, an action in the Federal Court of Canada, judicial review applications, and appeals before the British Columbia Supreme Court and the Federal Court of Appeal.

[6] The appellant brought the present application for a declaration that the integration of seniority rights on the basis of relative position on a seniority list rather than by date of hire contravened his rights under ss. 7 and 15 of the *Charter*. If the court found that seniority by date of hire is protected by the *Charter*, the appellant sought an order declaring s. 18.1 of the *Code* unconstitutional.

[7] The application judge thoroughly reviewed the history of the seniority rights integration process and outcome. His reasons demonstrate that he was alive to the importance of seniority rights and of the integration issue for the appellant. Having carefully reviewed the relevant evidence in the record, and having addressed the parties' submissions, the application judge concluded that the integration of the seniority rights of the merged lists did not infringe the appellant's ss. 7 and 15 *Charter* rights.

[8] We see no basis to interfere with the application judge's decision.

[9] While the application judge recognized that the results of the arbitration and Board proceedings undoubtedly caused the appellant stress, he concluded

that the alleged psychological, emotional and physical stress did not amount to the kind of harm that constitutes an infringement of the appellant's s. 7 *Charter* rights. Further, the application judge found that the alleged devaluation of the appellant's seniority concerned harm to economic rights, which are not protected under the *Charter*. Rather, the integration of the collective seniority rights in issue was properly addressed by the bargaining parties in a collective bargaining process. We see no error in these conclusions. Nor did the application judge err in finding that the integration of seniority rights did not result from any discrimination because of age, or other enumerated or analogous ground protected under s. 15 of the *Charter*.

[10] The appellant raises the issue of procedural fairness and submits that he was prevented from making several arguments before the application judge. The appellant was represented by counsel on the application. Although he acknowledges that his counsel ably presented his *Charter* arguments, the appellant submits his counsel did not raise the arguments that he wanted to raise before the application judge, and he now seeks to raise them on appeal. These arguments include, but are not limited to, the illegal acquisition and merger of the two airlines; discrimination against female members of the merged bargaining unit; improper activities by the union and certain of its representatives; and malfeasance, dereliction of duty, and obstruction of justice, specifically by the Canadian Human Rights Commission and the Board.

[11] We are not persuaded by this submission.

[12] It is important to recall that counsel and the court are circumscribed by the issues raised by the parties in their pleadings. The appellant's application sought a *Charter* remedy for the alleged infringement of his ss. 7 and 15 rights as a result of the integration of seniority rights and a declaration of constitutional invalidity of s. 18.1 of the *Code*. The appellant pursued all available avenues of relief in his various proceedings in which he already litigated many of the issues he seeks to raise on appeal. The appellant cannot pursue these issues within the framework of this application.

[13] Turning to the motion for fresh evidence, the appellant seeks to admit numerous documents on appeal, including several motion records and other court filings related to the proceedings instigated by the appellant in other forums. While the transcripts from the hearing of the application can properly be added to the record, we dismiss the motion seeking to file fresh evidence. We agree with the respondent that the proposed fresh evidence would not have affected the outcome of the application because it concerns matters already litigated and outside its scope.

[14] Accordingly, the appeal is dismissed.

[15] The respondent does not seek costs. As a result, we make no order as to costs.

"Paul Rouleau J.A."

"K. van Rensburg J.A."

"L.B. Roberts J.A."