

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

TRANS ATLANTIC PREFORMS LIMITED)

Appellant)

- and -)

LABOUR RELATIONS BOARD)
(NOVA SCOTIA), and NATIONALS)
AUTOMOBILE, AEROSPACE,)
TRANSPORATION AND GENERAL)
WORKERS UNION OF CANADA)
(CAW CANADA))

Respondent)

REASONS FOR
JUDGMENT BY:

CLARKE, C.J.N.S.
(Orally)

The reasons for judgment of the Court were delivered orally by:

CLARKE, C.J.N.S.:

On February 17, 1997 Justice Hamilton of the Supreme Court dismissed an application by the appellant for an order in the nature of *certiorari* to quash an order of the Labour Relations Board (Nova Scotia).

The matter before the Board resulted from a complaint made by the respondent (Union) by which it alleged the appellant (employer) terminated the employment of Reginald MacDonald on May 20, 1995 contrary to the **Trade Union Act** R.S.N.S. 1989, Chap. 475, s. 53. The complaint falls under the heading generally known as "Unfair Practices".

After a lengthy hearing the Board issued an order on December 22, 1995 by which it allowed the complaint and ordered the reinstatement of Mr. MacDonald on certain terms and conditions. On April 10, 1996 the Board issued reasons for its order which extended to 27 pages. The Board found that the appellant violated ss. 53(1)(a) and 53 (3)(a)(i) of the **Trade Union Act**:

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53 (1) No employer and no person acting on behalf of an employer shall

(a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union;

.....

(3) No employer and no person acting on behalf of an employer shall

(a) refuse to employ or to continue to employ any person or otherwise discriminate against any person in regard to employment or any term or condition of employment, because the person

(i) is or was a member of a trade union,

.....

In its application for an order in the nature of *certiorari* the appellant alleged that the Board breached the rules of natural justice in relation to certain procedural issues. In addition the appellant contended that the decision of the Board was patently unreasonable because the Board lacked the evidence from which it could draw the inferences it made that s. 53(1)(a) was violated. Further the appellant argued the decision of the Board that the appellant violated s. 53(3)(a)(i) was irrational.

In her written reasons for judgment, Justice Hamilton dismissed the application on all its grounds.

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The appellant now appeals from the decision of Justice Hamilton on substantially the same issues that were before her. The appellant contends Justice Hamilton committed errors in law.

We agree with both counsel that the jurisprudence developed by this Court and the Supreme Court of Canada is that the decision of the Board, for reasons other than natural justice, is reviewable if it is patently unreasonable. We refer to the decision of this Court in *Nova Scotia*

Government Employees Union v. Civil Service Commission (N.S.) et al. (1992), 117 N.S.R. (2d) 91 at pp. 94-96 and of the Supreme Court of Canada in ***Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.***, [1996] S.C.J. No. 116 at paras. 56 and 57.

There are several others from both courts in like vein.

In preparation for this appeal, we have reviewed the record in detail. We have studied the written submissions set forth in each factum and now we have heard and considered the oral submissions of each counsel.

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As Justice Hamilton found, the issues are within the primary jurisdiction of the Board. The Board made findings of fact for which there is evidence in support. Its findings are protected by a privative clause (s. 19(1)(e)). The conclusions reached by the Board are neither wrong nor irrational. Likewise, Justice Hamilton made no error in law in concluding that she had not been satisfied by the appellant that the Board breached the rules of natural justice.

In summary, we are unable to conclude that Justice Hamilton made any errors in law in her analysis of the application before her. Accordingly we dismiss the appeal and award costs both at trial and on appeal of \$2,500.00 to the respondent, plus its disbursements.

C.J.N.S.

Concurred in:

Matthews, J.A.

Flinn, J.A.