

National Bank of Canada v. Canada (Minister of Labour), 1998 CanLII 8077 (FCA)

1. Date: 1998-06-17

Docket: A-484-97

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CORAM: STONE J.A.

LÉTOURNEAU J.A.

ROBERTSON J.A.

BETWEEN:

THE NATIONAL BANK OF CANADA

Appellant

AND:

THE HONOURABLE ALFONSO GAGLIANO, Minister of Labour

acting pursuant to subsection 242(1) of the *Canada Labour Code*;

MICHELLE A. PINEAU, adjudicator, appointed

pursuant to subsection 242(1) of the *Canada Labour Code*; and

MYRELLE PARIS

Respondents

Heard at Ottawa, Ontario, Wednesday, June 17, 1998

Judgment delivered from the Bench at Ottawa, Ontario, Wednesday, June 17, 1998

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

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario

on Wednesday, June 17, 1998)

LÉTOURNEAU J.A.

[1] This is an appeal from a well-reasoned decision of Rothstein J. sitting as a motions judge who, in interpreting subsection 168(1) of the *Canada Labour Code* (Code) (R.S.C. 1985, L-2 as amended), came to the conclusion that a settlement reached between an employer and an employee upon the dismissal of the employee does not prevent the laying of a complaint for wrongful dismissal by that employee under section 240 of the Code.

[2] Subsection 168(1) stipulates, in effect, that Division XIV of the Code which deals with the right to lay a complaint for wrongful dismissal applies "notwithstanding any other law or any custom, contract or arrangement". The motions judge was of the view that any settlement contract between an employer and an employee is subject to the minimum statutory requirements established in favour of employees in Part III of the Code. Therefore, the employee was entitled to resort to the mechanism of complaint for wrongful dismissal and the Minister, pursuant to the complaint and the unsuccessful efforts of the inspector to assist the parties in settling the

complaint, had the authority under section 242 of the Code to appoint an adjudicator to hear the complaint.

[3] Finally, the motions judge rejected an allegation that the employer was denied procedural fairness as a result of a breach of natural justice, such breach consisting in the fact that the employer did not receive two pages that were attached to the employee's complaint as well as a copy of a memo from a Mr. McKnight to the "Sous-ministre adjoint du Travail" in which the employee is reported to have claimed that she was forced to resign. The motions judge was satisfied that no prejudice had resulted to the employer as the issues raised in the missing documents were satisfactorily addressed in subsequent correspondence between the investigator of the complaint and the employer since the employer was given an opportunity to comment on the employee's allegations of unjust dismissal.

[4] Notwithstanding the thoughtful submissions of counsel for the Appellant, we are all of the view that the motions judge made no error in his interpretation of sections 168 and 240 of the Code and their relationships with a settlement reached between an employer and an employee upon dismissal. Section 168 protects the right of an employee to complain of an unjust dismissal even if that employee has signed a contract by which his or her employment is terminated. Indeed, it is not difficult to envisage a situation where an employee could, after having signed such a contract, realize that the termination of his or her employment is not the result of a legitimate business restructuration as he or she was led to believe, but is instead a coloured or disguised attempt at wrongfully dismissing her or him. This shows the wisdom of the Code in protecting an employee's access to the remedies against unjust dismissal notwithstanding the signature of a termination contract between the parties.

[5] We are also satisfied that there was no denial of natural justice to the employer. Although it would have been preferable that the missing material be given to the employer, we agree that the subsequent exchange of correspondence provided the employer with adequate opportunity to express its views on the wrongfulness of the dismissal.

[6] Counsel for the Appellant argued before us that the correspondence did not provide the employer with the opportunity to rebut the employee's allegation that she was forced to sign the settlement and, therefore, that the employee had challenged the validity of the settlement. We would like to point out that what the employee complained of in the letter of Mr. McKnight to the "Sous-ministre adjoint du Travail" is that she had been forced to **resign** from her position which is simply another way of saying that she had been wrongfully dismissed.

[7] For these reasons, the appeal will be dismissed with costs.

"Gilles Létourneau"

J.A.