CITATION: 2130869 Ont. Ltd. v. Universal Workers Union, 2013 ONSC 1593
DIVISIONAL COURT FILE NO.: 359/12
DATE: 20130314

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

MOLLOY, HERMAN AND EDWARDS JJ.

BETWEEN:	
2130869 ONTARIO LTD. Applicant	*Herbert H. B. Law*, for the Applicant
– and –	
UNIVERSAL WORKERS UNION, LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183, BAYWOOD CARPENTRY & GENERAL CONTRACTING LTD., and the ONTARIO LABOUR RELATIONS BOARD Respondents	*Paul J. J. Cavalluzzo* and *Adrienne Telford*, for the Respondent, Universal Workers Union, Labourers International Union of North America, 183 *Leonard Marvy*, for the Respondent, Ontario Labour Relations Board
	HEARD at Toronto: March 14, 2013

MOLLOY J. (ORALLY)

Background

[1] This is an application for judicial review of a series of decisions of the Ontario Labour Relations Board ("the Board") which declared the applicant 2130869 Ontario Ltd. ("213") to be

a related employer to Baywood Carpentry & General Contracting Ltd. ("Baywood"), pursuant to ss. 1(4) and 69 of the *Labour Relations Act, 1995,* S.O. 1995 c. 1 ("the Act").

[2] On February 28, 2012, the Board granted the Union's related employer application in default since 213 had failed to file its response. By that time, the Board had already granted 213 a seven day extension of time to file the response, which was then due on February 23, 2012.

[3] On March 26, 2012, after retaining counsel, 213 requested a reconsideration of the default decision. The Board issued a decision on March 28. It did not dismiss the 213 request for reconsideration out of hand but gave an opportunity to the Union and the related employer Baywood to file material. Baywood filed nothing. The Union did file material and 213 filed a response on May 4, 2012.

[4] By decision dated May 8, 2012, the Board definitively rejected the application for reconsideration. Because Baywood had filed no response, the Board treated it as having accepted the facts as asserted by the Union. It held that, although, in theory, the applicant was more prejudiced than the respondent since it would not be able to litigate its case, the dominant concern was that 213 had no valid reason for failing to meet the timelines set by the Board. In short, the Board stated, "The potential prejudice is outweighed by [213's] cavalier attitude to the Board's process."

[5] The Board went on to comment that the draft response filed by 213 "does not present a strong case, although it would raise enough of a defence … to preclude any question of an adverse decision based on the pleadings alone." The Board also held that 213 could not rely on

its own failure to post the Notice to Employees as a reason that the February 28, 2012 decision should be reconsidered.

The Issues

[6] The applicant 213 raises two issues before this Court:

1. Did the Board act unreasonably when it denied the applicant's request for reconsideration?

2. Did the Board act in breach of procedural fairness and natural justice by refusing to set aside the default decision in light of the lack of notice to employees, or alternatively, is its decision unreasonable in that regard?

Analysis

[7] I will deal with these issues in reverse order. With respect to the second point, we find it is not open to 213 to raise issues of natural justice and procedural fairness in relation to other individuals, i.e. its own employees. 213 acknowledges that at some point the employees became aware of this Union issue. However, no employee has sought to assert any right in that regard either before the Board or this Court.

[8] Further, the reason the employees (who at the time were only 4 in number) did not initially receive notice was because 213 breached its obligation under the Act to post the notice. 213 was represented by counsel at least by March 23 when its first material was filed with the

Board. Even after the default order was made and 213 was in the process of attempting to persuade the Board to reconsider, it still failed to put its employees on notice. Right up until May 4, 2011, over two months after the default order, when 213 was filing its reply material before the Board, it still had not given notice to the employees and yet was seeking an indulgence before the Board, based in part on its own default in providing notice.

[9] We find that the Board acted reasonably in refusing to grant this indulgence to the employer 213, based on its own failure to comply with the Act in regards to the notice.

[10] There being no breach of procedural fairness or natural justice, and a reasonable basis for the Board's decision, we find no merit to this ground of judicial review.

[11] With respect to the first issue, the parties agree that the standard of review is reasonableness.

[12] The Board considered and weighed all the submissions and evidence and determined that 213 provided no acceptable reason for failing to file a timely response. The Board considered the issue of prejudice and found that the prejudice to 213 resulted from its own inaction and was outweighed by its cavalier attitude to the Board's process. The Board also found that 213 did not present a strong case on the merits in defence of the application. Ultimately the Board concluded that there were no compelling grounds warranting reconsideration and that the need for certainty and finality in its proceeding outweighed any alleged error in its decision.

[13] Counsel for 213 submits that the Board's failure to address the issue of possible expansion of Union bargaining rights is a basis for setting aside the decision. The Board has

considerable expertise in this area and would have been alive to this issue. The Board is not required to specifically address every issue raised by the applicant in its reasons. The reasons are sufficiently comprehensive and intelligible to meet the natural justice and reasonableness standard as articulated by the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62. This was an exercise of discretion by the Board. The Board considered relevant factors and reached a considered decision. It is not for this Court to substitute its view of the weight to be given to the various factors, thereby effectively substituting its discretion for that of the Board. Deference is owed to the Board on this issue. We find that the Board's decision in this regard fell within the range of available and reasonable outcomes and there was no basis for this Court to interfere.

[14] Accordingly, this application is dismissed.

[15] I have endorsed on the Record, "This application is dismissed for oral reasons given today. Costs are fixed at $6,000, payable by 213 to the Union forthwith. The Board does not seek costs."

MOLLOY J.

HERMAN J.

EDWARDS J.

Date of Reasons for Judgment: March 14, 2013
Date of Release: March 18, 2013

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Respondents

ORAL REASONS FOR JUDGMENT

MOLLOY J.

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