Court of Appeal for Saskatchewan

Docket: CACV2999

Citation: *Sun Country Regional Health Authority v The Health Sciences Association of Saskatchewan*, 2017 SKCA 86

Date: 2017-10-11

Between:

Sun Country Regional Health Authority

Appellant
(Applicant)

And

Theodore Francise Koskie and The Health Sciences Association of Saskatchewan

Respondent
(Respondent)

Before:	Jackson, Caldwell and Schwann JJ.A.
Disposition:	Appeal dismissed (orally)
Written reasons by:	The Honourable Mr. Justice Caldwell
In concurrence:	The Honourable Madam Justice Jackson The Honourable Madam Justice Schwann
On Appeal From:	QBG 2091 of 2016, Regina
Appeal Heard:	October 11, 2017
Counsel:	Stephen D. McLellan for the Appellant Gary L. Bainbridge for the Respondent

Caldwell J.A.

[1] Sun Country Regional Health Authority seeks to set aside the decision of the Chambers judge (*Sun Country Regional Health Authority v Koskie* (17 October 2016) Regina, QBG 2091/16 (Sask QB)) declining to intervene in the arbitration decision made in *Health Sciences Association of Saskatchewan v Sun Country Regional Health Authority* (22 February 2016), Saskatchewan Labour Arbitration Awards (Koskie) [*Arbitration Decision*]). The *Arbitration Decision* had allowed a denial of paid sick leave grievance as against Sun Country.

[2] In *Dr. Q v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 at para 43, [2003] 1 SCR 226, McLachlin C.J. explained that the role of an appellate court in cases such as this is to determine whether the reviewing judge has chosen and applied the correct standard of review. No deference is owed to the reviewing judge in such appeals. If the reviewing judge has not chosen the correct standard, the appellate court must assess the tribunal decision in light of the correct standard of review. If the reviewing judge has chosen the correct standard, the appellate court must ensure the reviewing judge correctly applied that standard of review: *Westfair Foods Ltd. v United Food and Commercial Workers, Local 1400*, 2006 SKCA 8 at paras 12–14, 263 DLR (4th) 397; *Canadian Union of Public Employees, Local 59 v Saskatoon (City)*, 2014 SKCA 14 at para 22, 433 Sask R 134.

[3] In this case, the parties had both submitted to the Chambers judge that the standard of reasonableness applied in his judicial review of the *Arbitration Decision*. They have each maintained that position in this Court and we agree that reasonableness is the appropriate standard of review. Indeed, we would reinforce this with reference to *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, where the Court reiterates the often stated view that the review of labour arbitration decisions should be approached with deference:

> [68] The nature of the regime also favours the standard of reasonableness. This Court has often recognized the relative expertise of labour arbitrators in the interpretation of collective agreements, and counselled that the review of their decisions should be approached with deference: *CUPE*, at pp. 235-36; *Canada Safeway Ltd. v. RWDSU, Local 454*, [1998] 1 S.C.R. 1079, at para. 58; *Voice Construction*, at para. 22. The adjudicator in this case was, in fact, interpreting his enabling statute. Although the adjudicator was appointed on an *ad hoc* basis, he was selected by the mutual agreement of the parties and, at an institutional level, adjudicators acting under the *PSLRA* can be presumed to hold relative expertise in the interpretation of the legislation that gives them their mandate, as well as related legislation that they might often encounter in the course

> of their functions. See *Alberta Union of Provincial Employees v. Lethbridge Community College*. This factor also suggests a reasonableness standard of review.

[4] On this basis, we find that the Chambers judge committed no reversible error when applying the standard of reasonableness in his review of the *Arbitration Decision*. He correctly concluded there was no basis for interference with Arbitrator Koskie's award.

[5] As the Chambers judge observed, it is clear from the *Arbitration Decision* that Arbitrator Koskie had full appreciation of the evidence that was before him and the context in which the grievance had arisen as well as the arguments of the parties and the relevant provisions of the collective bargaining agreement. Arbitrator Koskie identified the legal and factual framework for his interpretation of the collective bargaining agreement in the circumstances at hand. While it does not affect the reasonableness of Arbitrator Koskie's award, we question whether the interpretive principles to apply to a collective bargaining agreement are those found in the law of statutory and contractual interpretation. In particular, we note the authors of Donald J.M. Brown and David M. Beatty, *Canadian Labour Arbitration*, loose-leaf (Rel 41, December 2014) 4th ed, vol 1 (Toronto: Canada Law Book, 2014) at para 4:2300, observe:

> In construing collective agreements, arbitrators look to the purpose of the particular provision in the collective agreement as an aid to determining the meaning intended by the parties. In this regard, they have recognized that collective agreements are not negotiated in a vacuum, but rather are settled in the context of general industrial relations practices, within a specific negotiating context and against a vast history of judicial and arbitral jurisprudence which will affect the parties' expectations and understandings. In the result, arbitrators give effect to this general contextual climate by requiring clear statements to alter such general expectations.
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> [Footnotes omitted]

However, since we heard no argument on this point, we leave that issue for another day.

[6] While we might not endorse the interpretational principles outlined by Arbitrator Koskie, we find his reasons support his interpretation of the collective bargaining agreement and coherently explain why, in accordance with that interpretation, he had allowed the grievance. That is, Arbitrator Koskie's reasoning is intelligible and persuasive and, as the Chambers judge concluded, the arbitration award falls within the range of possible, acceptable outcomes that are defensible on the facts and law. In short, we find the Chambers judge correctly concluded that the *Arbitration Decision* is a reasonable decision.

[7] For these reasons, we find no room for appellate intervention in this matter. The appeal is dismissed with costs to The Health Sciences Association of Saskatchewan in the usual manner.