



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *Young v. Clarke*, 2018 NLCA 67

Date: November 30, 2018

Docket Number: 201801H0002

BETWEEN:

TRENT DOUGLAS YOUNG

APPELLANT

AND:

W. JOHN CLARKE

FIRST RESPONDENT

AND:

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 904

SECOND RESPONDENT

AND:

ATLANTIC MINERALS LIMITED

THIRD RESPONDENT

Coram: Harrington, Hoegg and Goodridge JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
General Division 201704G0206

Appeal Heard: November 22, 2018

Memorandum of Disposition Filed: November 30, 2018

Trent Douglas Young, the Appellant: Self Represented

Counsel for the First Respondent: Colin D. Feltham

Counsel for the Second Respondent: Ronald A. Pink Q.C.

Counsel for the Third Respondent: Twila E. Reid and Giles Ayers

MEMORANDUM OF DISPOSITION

Hoegg J.A.:

[1] Trent Young, a member of the International Union of Operating Engineers, Local 904 (the Union), applied for judicial review of an arbitration award upholding his termination of employment at Atlantic Minerals Limited. Upon learning of Mr. Young's application, the Union applied to have it dismissed. The Applications Judge allowed the Union's application and dismissed Mr. Young's application (*Young v. Clarke* (2017), 295 A.C.W.S. (3d) 166 (NLSC)). Mr. Young appealed the Judge's decision.

[2] When Mr. Young was terminated from his employment at Atlantic Minerals Limited on June 10, 2015, the Union grieved his dismissal. The matter was eventually referred to mediation/arbitration and W. John Clarke, Q.C. was appointed the arbitrator. Mr. Clarke upheld Mr. Young's dismissal in an award dated May 29, 2017. The Union did not seek judicial review of the arbitration award.

[3] On September 15, 2017, Mr. Young applied for judicial review of the arbitrator's award. The Union's subsequent application to have Mr. Young's application for judicial review dismissed was based on the argument that Mr. Young had no standing to apply for judicial review. Moreover, the Union argued, even if Mr. Young did have standing, his application was out of time. The Applications Judge dismissed Mr. Young's application on the basis that he had no standing to bring it.

[4] Mr. Young's appeal was heard on November 22, 2018. He represented himself but was permitted to have the assistance of Mr. Roger LaSaga pursuant to rule 22(2)(b) of the *Court of Appeal Rules*.

[5] After consideration of the record and the written and oral submissions of Mr. Young and all counsel, the Court dismissed Mr. Young's appeal.

[6] In short, the principles governing the relationships among unions, their members, and employers are well-established. The parties to grievance or judicial review proceedings are unions and employers; individual union

members are not parties for the purposes of grievance proceedings or applying for judicial review of an arbitration award (*Noël v. Société d'énergie de la Baie James*, 2001 SCC 39, [2001] 2 S.C.R. 207, at paras. 62-63). Narrow exceptions to this rule have been recognized in the jurisprudence. They are: (1) where the collective agreement confers a right on the union member to seek judicial review; (2) where the union takes a position adverse to the member such that the proceedings are unfair; and (3) where the union's representation by the member is so deficient that the member must be given the right to pursue judicial review (*Migneault v. New Brunswick (Board of Management)*, 2016 NBCA 52, 452 N.B.R. (2d) 223, at para. 8; *Yee v. Trent University*, 2010 ONSE 3307, 320 D.L.R. (4th) 746; and *Misra v. Toronto (City)*, 2016 ONSC 1011, 345 O.A.C. 217).

[7] The Applications Judge correctly stated the law and identified the three exceptions. She determined that: (1) there was no provision in the applicable collective agreement which conferred a right to Mr. Young to have the arbitration award judicially reviewed; (2) there was no breach of natural justice or unfairness in the grievance or arbitration proceedings; and (3) there was no deficiency in Mr. Young's representation by the Union at those proceedings that would entitle him to seek judicial review.

[8] On appeal, Mr. Young focused on two arguments: (1) despite not being a party to the collective agreement, he was a party within the meaning of section 14(2) of the *Arbitration Act*, RSNL 1990, c. A-14 and thereby entitled to apply for judicial review; and (2) his signature on a Memorandum of Process, which he, the Union, the employer, and the arbitrator had signed and agreed to follow, gave him party status so as to entitle him to apply for judicial review. The reference to parties in section 14(2) the *Arbitration Act* refers to the Union and the Employer, and does not in any way give credence to the notion that an individual union member is a party for the purposes of seeking judicial review of an arbitration award. In regard to Mr. Young's agreement to the manner in which the arbitration proceeded, the process document he signed was a precaution taken to insure that all participants in the arbitration understood and agreed with the procedure to be followed. It specifically provides in clause 4 that the procedure agreed to, does not grant a right of challenge by any court, board, or the parties. Accordingly, such a process document does not make Mr. Young a party for the purposes of seeking judicial review, as the Judge found.

[9] Finally, the Judge observed that any complaint Mr. Young had about his representation by the Union could be addressed by filing a complaint under the

Labour Relations Act, RSNL 1990, c. L-1 and thereby seeking a remedy. The Court was advised that Mr. Young has availed of this process.

[10] In summary, the Court was of the view that the applications Judge made no error in her apprehension of the applicable law and its application to the facts of Mr. Young's case. Mr. Young was unable to demonstrate otherwise. Accordingly, his appeal was dismissed.

[11] The Court ordered Mr. Young to pay costs on the appeal to the Union and Atlantic Minerals Limited. We fix the amounts at \$750 for each.

L. R. Hoegg J.A.