



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

Citation: *LaSaga v. Atlantic Minerals Limited*,
2021 NLCA 20

Date: April 6, 2021

Docket Number: 201901H0107

BETWEEN:

ROGER LASAGA

APPELLANT

AND:

ATLANTIC MINERALS LIMITED

FIRST RESPONDENT

AND:

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 904

SECOND RESPONDENT

AND:

JAMES OAKLEY, Q.C.

THIRD RESPONDENT

Coram: Welsh J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
Corner Brook General Division 201904G0046

Appeal Heard: April 6, 2021

Judgment Rendered Orally: April 6, 2021

Memorandum of Disposition Filed: April 7, 2021

Counsel for the Appellant: Appearing on his own behalf

Counsel for the First Respondent: Twila E. Reid and David Constantine

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

Counsel for the Third Respondent: Gerard Martin, Q.C.

Authorities Cited:

STATUTES CONSIDERED: *Court of Appeal Rules*, NLR 38/16, rule 17.

Welsh J.A.:

[1] When Mr. LaSaga's employment with Atlantic Minerals Ltd. was terminated, the International Union of Operating Engineers, Local 904 brought a grievance on his behalf. By decision dated March 26, 2018, following ten days of arbitration hearings, the grievance was dismissed by the arbitrator, James Oakley Q.C. The Union determined that there was no basis on which to seek judicial review.

[2] Mr. LaSaga attempted to challenge the arbitrator's decision by means of originating applications and, later, by means of a statement of claim. The proceedings were dismissed for lack of jurisdiction.

[3] Mr. LaSaga then filed a notice of appeal, dated December 27, 2019, in this Court. Counsel for the Employer, the Union and the arbitrator all advised the Court at the hearing of this application that they had never been served with the notice of appeal. They became aware of the appeal when they received notice from the Court that the appeal would be deemed abandoned unless Mr. LaSaga took steps as set out in rule 17 of the *Court of Appeal Rules*, NLR 38/16. The Court had sent a notice of deemed abandonment to Mr. LaSaga and the other parties on January 7, 2021.

[4] Rule 17(1) provides for notice to be given by the Court that an appeal may be deemed abandoned:

Where an application or request to set a hearing date for an appeal has not been made within one year after the notice of appeal was filed, the registrar shall give the parties notice that subsections (2) and (6) shall apply.

[5] Rule 17(2) provides that an appeal shall not be deemed abandoned if the appellant delivers to the Court and the other parties a written explanation and proposed plan. Alternatively, with the consent of the other parties, the appellant may apply to have the appeal adjourned indefinitely. Rule 17(4) provides:

Upon application, the Court may adjourn the appeal indefinitely where the parties agree for good reason that the appeal should not be deemed abandoned but that, at the time, it is not practical to provide a proposed plan under subsection (2).

[6] Rule 17(6) provides for an appeal to be deemed abandoned where the appellant has not complied with rule 17(2) or (4) within 60 days after the notice of deemed abandonment was sent.

[7] Mr. LaSaga made an application under rule 17(4) giving as his reason “health and safety measures put in place during the pandemic”. The three respondents did not consent to Mr. LaSaga’s application. Accordingly, rule 17(4) could not be engaged.

[8] Further, in their written submissions, the respondents requested that the appeal be deemed abandoned based on the failure of Mr. LaSaga to carry forward his appeal and his complete disregard of and failure to comply with the *Rules*. Mr. LaSaga has not served the notice of appeal on the respondents. He has not requested a transcript or filed an appeal book or factum. His application for an indefinite delay indicates that he is not intending to proceed with the appeal on a timely basis as required by rule 16. He provided no good reason for a delay. Notices on the Court of Appeal website clearly specify that the Court has been continuing to operate during the pandemic. If Mr. LaSaga was unable to access the website, he could have contacted the registry by telephone.

[9] In the result, I was satisfied that the appeal should be deemed abandoned, with costs of \$1,000 for this application to be paid to each of the respondents as authorized under rule 17(7).

[10] If Mr. LaSaga applies in the future to have the appeal reinstated pursuant to rule 17(9), the Court will consider, among any other relevant factors, whether he has taken the necessary steps to ensure that the required documents are filed and served, and whether the costs of this application have been paid.

[11] Accordingly, at the hearing, I dismissed Mr. LaSaga's application for an indefinite delay, deemed the appeal to be abandoned, and ordered Mr. LaSaga to pay costs of \$1,000 for this application to each of the respondents.

B.G. Welsh J.A.