IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

Citation: *LaSaga v. Oakley*, 2019 NLSC 58
Date: March 12, 2019
Docket: 201804G0108

BETWEEN:

ROGER LASAGA

APPLICANT

AND:

JAMES OAKLEY

RESPONDENT

AND:

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 904

FIRST INTERVENOR

AND:

ATLANTIC MINERALS LIMITED

SECOND INTERVENOR

Before: Justice Brian F. Furey
Edited Transcript of Oral Reasons for Judgment

Place of Hearing:	Corner Brook, Newfoundland and Labrador
Date of Hearing:	January 10, 2019
Date of Oral Judgment:	January 30, 2019

Summary:

The First Intervenor and the Second Intervenor filed Interlocutory Applications seeking Orders that the Applicant's Originating Application for judicial review of the Respondent's arbitration award be set aside pursuant to Rule 10.05(1)(a) of the *Rules of the Supreme Court, 1986*.

Held: The Court found that the Applicant did not have standing to bring the Originating Application and granted the Intervenors' Interlocutory Applications. The Intervenors are awarded costs in the amount of $500 each.

Appearances:

Roger Lasaga	Appearing on his own behalf
Gerard J. Martin, Q.C. (Agent for Sandra Gogal)	Appearing on behalf of James Oakley
Ronald A. Pink, Q.C.	Appearing on behalf of International Union of Operating Engineers, Local 904
Twila E. Reid	Appearing on behalf of Atlantic Minerals Limited

Authorities Cited:

CASES CONSIDERED: *Young v. Clarke* (18 December 2017), Corner Brook 201704G0206 (N.L.S.C.); *Young v. Clarke*, 2018 NLCA 67; and *Noël v. Société d'énergie de la Baie James*, 2001 SCC 39.

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D.

REASONS FOR JUDGMENT

FUREY, J.:

INTRODUCTION

[1] These Applications were heard in court on January 10, 2019. Two separate Interlocutory Applications were filed by the First Intervenor and the Second Intervenor with respect to an Originating Application that Mr. LaSaga had filed. I have had an opportunity to review the matter. I will now give my decision.

[2] Both the first Intervenor and the Second Intervenor were granted an Order on September 12, 2018 to participate as Intervenors in the Interlocutory Applications referenced in paragraph 1. The Interlocutory Applications were filed in accordance with Rule 10.05 of the *Rules of the Supreme Court*, *1986*, S.N.L. 1986, c. 42, Sch. D. These Interlocutory Applications sought an Order that the Originating Application for judicial review that was filed by Mr. LaSaga on May 24, 2018 be set aside.

[3] The parties filed Briefs. These were detailed and were very helpful. Mr. Oakley's counsel did not take part in the submissions. He indicated that he was essentially taking a watching brief. The parties gave their oral submissions on January 10, 2019. I had the benefit of the case law that was provided by the parties as well as the oral decision of my colleague, Justice Knickle, in a matter called *Young v. Clarke* (18 December 2017), Corner Brook 201704G0206 (N.L.S.C.) and the very recent decision of November 30, 2018 of our Court of Appeal in the same case, *Young v. Clarke*, 2018 NLCA 67.

[4] The issue before the Court is whether the Originating Application should be set aside in accordance with Rule 10.05(1)(a). That Rule states: "a defendant may, at any time before filing a defence or appearing on an application, apply to the Court for an order setting aside the originating document or service thereof on the defendant".

[5] In this type of matter, the principles governing the relationships among unions, their members, and employers are well-established as set out in the Intervenors' submissions, the case law, and the two cases from this jurisdiction which I mentioned.

[6] The parties to a grievance proceeding or a judicial review of an arbitration award are the unions and the employers. Individual union members are not parties for those purposes (See *Noël v. Société d'énergie de la Baie James*, 2001 SCC 39 at paragraphs 62 and 63).

[7] There are three exceptions to the standard rule that have been recognized in the case law. Those exceptions have been set out in multiple decisions. For example, in the decision from our Court of Appeal, *Young v. Clarke*, in paragraph 6, Hoegg, J.A. stated in part:

> 6. . . . 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 (CanLII), 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 (CanLII), 345 O.A.C. 217).

[8] Both Intervenors in their submissions canvassed the law in respect to each exception and argued that none of these exceptions apply to Mr. LaSaga. They also referred extensively to the decision of Knickle, J. in *Young v. Clarke*. Counsel argued that this decision is directly on point with the matter involving Mr. LaSaga. That matter involved the same parties, the same question, the same legislation, and the same collective agreement.

[9] Mr. LaSaga takes a contrary view. However, neither Mr. LaSaga's arguments in his written submissions nor in his oral submissions persuade me that he comes within the three exceptions I referenced earlier.

[10] I specifically adopt the statements of Knickle, J. and our Court of Appeal in deciding the appeal regarding *Young v. Clarke* as being completely applicable to this matter involving Mr. LaSaga.

[11] Based on my review of the Interlocutory Applications, the submissions of the parties, and the case law, I find that Mr. LaSaga does not have standing to bring the Originating Application. Therefore, I order that the Originating Application of Roger LaSaga dated and filed on May 24, 2018 seeking judicial review of the arbitration award of James Oakley, the Respondent herein, be set aside in accordance with Rule 10.05(1)(a) of the *Rules of the Supreme Court, 1986*. I direct that costs in the amount of $500 be awarded to each of the First Intervenor and the Second Intervenor.

[12] That is my decision in the matter. I would ask either Mr. Pink or Ms. Reid to prepare an Order to that effect since you represent the Intervenors in the matter.

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BRIAN F. FUREY
Justice