

CITATION: Cai Song v. Ontario Labour Relations Board, 2026 ONSC 165
DIVISIONAL COURT FILE NO.: 493/25
DATE: 20260112

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: Cai Song, Applicant

AND:

Ontario Labour Relations Board and T&T Supermarket Inc, Respondents

BEFORE: Sachs, Backhouse, and O’Brien JJ.

COUNSEL: Applicant – Self-Represented

Andrea Bowker, Counsel for Ontario Labour Relations Board

Zachary Lebane and Connie Cheung, Counsel for T&T Supermarket Inc.

HEARD at Toronto: on January 5, 2026

ENDORSEMENT

[1] The applicant was a part-time employee of T&T Supermarket Inc. at their grocery store in Thornhill from November 2nd, 2022 until November 30, 2023.

[2] The applicant made a 24-page long post on York BBS, a social media platform that targets the Chinese Canadian community, T&T’s primary customer base. In the post, the applicant compared T&T to the “majesty of the party state”. He alleged racism, discrimination and numerous other criticisms of T&T. This post was brought to management’s attention who directed the applicant to remove the post by November 27, 2023. He did not and the decision was made to terminate the applicant’s employment on the morning of November 28, 2023. In the afternoon of November 28, 2023, an inspector from the MOL visited the Thornhill store location pursuant to the applicant’s complaint under the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 (the “*OHS Act*”) regarding the alleged failure of T&T to have posted workplace violence and harassment policies in the store. On November 30, 2023, the applicant’s employment was terminated.

[3] The applicant brought two applications:

- (1) alleging that that his termination was an unlawful reprisal as a result of his internal and external harassment and health and safety complaints contrary to s.50 of the *OHS*A (the “*OHS*A application”) -- he had raised a complaint about a co-worker, Ms.Wong, after T&T had commenced disciplinary investigations about him. He escalated this complaint internally and included complaints about the conduct of his store manager, Mr. Zhao. He then contacted the Ministry of Labour (MOL) to initiate a complaint under the *OHS*A; and
- (2) alleging an unfair labour practice for engaging in pro-union activity contrary to s.72 of the *Labour Relations Act 1995*, S.O. 1995, c.1, Sched.A (the “*LRA*”) —he had signed a union card with United Food and Commercial Workers and commenced working as an organizer on their behalf.

[4] The applicant submitted that all of these matters informed the decision to terminate his employment.

[5] After a hearing extending over nine days, the Ontario Labour Relations Board (the “Board”) dismissed his applications on May 21, 2025 (the “Decision”). The Board preferred the evidence of T&T’s five witnesses over the evidence given by the applicant who “was caught in a number of blatant falsehoods in his cross-examination”. The Board found that the applicant was given to prevarication and his evidence was unreliable. It accepted that the decision-makers were not aware of the applicant’s pro-union activity or his MOL complaint until after the decision to terminate him was made. They were aware of his internal complaints, but these were found not to be a factor in his termination. As a result, the Board found that the applicant was terminated for refusing to take down the social media post defaming T&T.

[6] The applicant seeks judicial review of the Board’s Decision, arguing that it made numerous errors, including exceeding its jurisdiction by making findings related to defamation, harassment and bad faith, failing to properly assess the evidence before it, failing to provide procedural fairness and failing to justify its decision according to the principles of *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019SCC 65 (“*Vavilov*”). He requests that the Decision be quashed and remitted to a differently constituted panel of the Board.

[7] T&T submits that many, if not all, the concerns of the applicant on this application could have been addressed under the reconsideration power in s.114(1) of the *LRA*, the Decision was within the jurisdiction of the Board, that it was procedurally fair and reasonable, and requests the dismissal of the applications be upheld.

[8] The application is dismissed for the following reasons.

[9] The standard of review for the Board’s decision is reasonableness: *Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v Bricklayers Masons Independent Union of Canada, Local 1*, 2022 ONCA 2022 at para 53.

[10] The applicant argues that the questions of jurisdiction to address defamation and harassment are subject to a correctness standard, as these address the jurisdictional boundaries between administrative bodies. In *Vavilov* at para. 65, the Supreme Court of Canada expressly rejected a correctness review on general jurisdictional questions. The presumption for standard of review on a judicial review is reasonableness which the applicant has not rebutted.

[11] On matters of procedural fairness, the court must determine whether the Board afforded the required level of procedural fairness in light of all the circumstances, applying the criteria set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

[12] The applicant was not denied procedural fairness. The applicant argues that he had no opportunity to make submissions prior to the Board finding that his social media post amounted to defamation of T&T and the finding that his internal complaint that he was harassed by a co-worker was *de minimis* and constituted bad faith on the part of the applicant. This argument misapprehends the Board's comments related to defamation and harassment. The Board was not deciding a legal question of defamation. The Board used the term "defamatory" in para 161 of the Decision in the colloquial and ordinary sense of the word, that is, a statement damaging to T&T's reputation, when considering whether it was appropriate for T&T to direct the applicant to remove the social media post. With respect to the finding about harassment, at para 164 of the Decision, the Board accepted the evidence that the decision-makers did not consider the applicant's internal complaints in deciding to terminate his employment. The Board then went on to provide additional context based on the evidence that the applicant's internal complaint against Ms. Wong was not made in good faith, had suspicious timing and complained of a very minor incident which the Board stated could hardly be considered bullying or harassment.

[13] If the applicant felt that he was denied an opportunity to make submissions on defamation and harassment, he could have sought reconsideration under s.114(1) of the *LRA* which gives the Board the power to reconsider any decision it has made. These issues fall squarely within Information Bulletin 19 where the Board has stated it will grant a request for reconsideration in a variety of circumstances including "Where representations are sought to be made which the party seeking consideration had no previous opportunity to make". Therefore, the applicant's application for judicial review on this issue is premature.

[14] In any event, the Board did not exceed its jurisdiction by making findings about defamation and harassment as argued by the applicant. As noted above, the Board was not deciding a legal question of defamation and did not find the applicant to be liable for the tort of defamation which lies within the exclusive jurisdiction of the Superior Court. As well, the Board was not making a finding related to harassment under the *Human Rights Code*. Rather, the Board found that the applicant made the internal complaint about Ms. Wong because he was seeking to insulate himself from discipline. This finding is *obiter* and does not have any bearing on whether the internal complaints were considered by the decision-makers when they made their termination decision, which the Board found they were not.

[15] The several superficial, minor errors that are obvious typographical errors identified by the applicant do not impact the reasonableness of the Decision. Reasonableness, not perfection, is the standard: *Kayitankore v Canada (Citizenship and Immigration)*, 2016 FC 1030 at para 26. The minor errors could have been easily corrected through a Request for Reconsideration, rather than a judicial review application. Information Bulletin 19 specifically identifies “Where the decision contains an obvious error” as a basis for granting a request for reconsideration. Therefore, as set out below, we would decline to hear the applicant’s application for judicial review on this issue.

[16] The principle of finality in the effective administration of justice supports that a party who has the capacity to raise an issue before an administrative decision-maker and does not do so should not be given the ability to make that objection on judicial review. As the court concluded in *McCool v Ontario Labour Relations Board*, 2019 ONSC 1561 at para.30, “[h]ere the Applicant could reasonably have raised all the natural justice issues he is raising on this application before the Board. He did not do so. Therefore, in the interests of finality we decline to allow him to pursue these arguments before us.”

[17] We also do not find a basis to interfere with the Board’s factual findings. The Board found that this case turned largely on whether it accepted as credible, the testimony of the responding party’s witnesses or that of the applicant.

[18] Throughout his factum and in his submissions, the applicant asks this court to reassess the evidence before the Board, engage with hypotheticals which were not in evidence and substitute its own findings of credibility. The Supreme Court of Canada in *Vavilov* at para 125 has made it clear this is not the role of a reviewing court:

It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker. Indeed, many of the same reasons that support an appellate court’s deferring to a lower court’s factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review.[citations omitted]

[19] At paragraphs 151-154 of the Decision, the Board made findings of credibility with respect to both T&T’s witnesses and the applicant’s witnesses (himself and Hao, a Produce Department Associate). The Board found T&T’s witnesses to be credible and the applicant’s evidence to be unreliable. The Board also found that where the applicant’s evidence contradicted any other evidence, it preferred the other evidence over the applicant’s.

[20] At paragraphs 156 and 157 of the Decision, the OLRB accepted the testimony of two of the decision-makers, Ms. Zhao, Senior Human Resources Manager and Ms. Leung, Senior Human Resources Director, that the decision-makers were not aware of the applicant’s union organizing

activities or his MOL complaint. The Board further accepted their testimony that the decision-makers did not consider the applicant's internal complaints when deciding to terminate his employment.

[21] The Board specifically found at para 160 that the applicant called no evidence directly or in cross-examination to suggest the decision-makers had any knowledge of the applicant's organizing activity or complaint to the MOL.

[22] The applicant submits that two individuals, Amanda Wen or Leo Yan, could have known the reasons for the MOL visit on November 27, 2023. As Ms. Wen and Mr. Yan were not the decision-makers, this was not evidence that the decision-makers knew the reason for the MOL visit prior to making the decision to terminate the applicant's employment. Ms. Zhao and Ms. He, Assistant Manager Human Resources, testified as to their own lack of knowledge of the MOL complaint which the Board was entitled to and did accept.

[23] The Board had to decide the answer to a single question: was the termination of the applicant's employment with T&T motivated by anti-union or anti OHSa animus. After hearing sworn testimony from two of the individuals who made the decision to terminate the applicant's employment, the Board determined it believed their testimony that it was not.

[24] The Board did not err in refusing to draw an adverse inference from the fact that two of the four decision-makers did not testify. As the applicant had led no evidence that contradicted the evidence of Ms. Zhao or Ms. Leung, Senior Director of Human Resources, the Board correctly found that there was no critical conflict in the evidence and held it would not draw an adverse inference, relying on its decision in *Labourers' International Union of North America, Local 183 v Stylux Homes Inc.*, 2024 CanLII 102079 (ON LRB). Further, if the applicant felt that this evidence was crucial, he could have called those witnesses to testify.

[25] The applicant raises for the first time what he refers to as "plausible channels" through which the decision-makers could have learned of his protected activity. These hypothetical areas unsupported by any evidence, were not raised before the Board and do not constitute a critical conflict.

[26] The Board did not err in failing to rely on the case of *Parris v. Laidley*, 2012 ONCA 755, which the applicant raised to suggest that the Board should draw an adverse inference from T&T's failure to call key witnesses. That decision is a five-paragraph decision where the court held it was an error for a motions judge on a summary judgment motion to draw an adverse inference on the facts of that case. The decision came to the opposite conclusion from the one the applicant was urging on the Board.

[27] There was nothing unreasonable about the Board's decision to deny the applicant's request to admit the MOL file on the basis that the file had no evidentiary value and its admission would offend the rule in *Browne and Dunn*.

[28] The applicant raises several superficial or peripheral issues (some for the first time) that could have had no effect on the ultimate decision before the Board. In *Vavilov* at para 128, the Supreme Court of Canada held that an administrative decision-maker is not required to address every possible argument or analysis. It is not a reviewable error for the Board not to address these arguments in the Decision. There is no error in the Board's failure to address an argument not put to it.

[29] The applicant has not established that the Decision is internally inconsistent, factually incoherent, procedurally unfair or unreasonable.

[30] The application is therefore dismissed.

[31] T&T seeks costs of \$11,700. The Board does not seek costs. The applicant submits that if he is unsuccessful, there should be no costs ordered against him, based on his inability to pay and the importance of the issues raised which he is also raising in two other lawsuits in the Small Claims Court and the Superior Court. He further submits that by not seeking reconsideration, there were not the additional costs of that proceeding.

[32] Courts have a responsibility to ensure that self-represented persons are provided with fair access and equal treatment by the courts. Such concepts do not entail unlimited or consequence free access to our courts by self-represented litigants. Nor do they entail unequal treatment of litigants whereby those who are represented face the prospect of adverse cost awards while self-represented litigants do not. Appellate authority has recognized and emphasized that the ability to award costs is an important tool in the hands of the court to influence the way parties conduct themselves and prevent abuse of the court's process: *Floryan v. Luke*, 2023 ONSC 6122 at para 64(f).

[33] It would not be fair or appropriate to order no costs be paid by the applicant. Impecuniosity is not a blanket exemption from costs. Had the applicant sought reconsideration before the Board, that would have been a less costly way of proceeding. The application was lacking in any merit. The applicant is ordered to pay costs to T&T in the amount of \$7, 500.

Sachs J.

Backhouse J.

Released: January 12, 2026