

Court of King's Bench of Alberta

Citation: Astolfi v Alberta Labour Relations Board, 2026 ABKB 45

Date: 20260120
Docket: 2401 01701
Registry: Calgary

2026 ABKB 45 (CanLII)

Between:

Jon Astolfi

Applicant

- and -

**Alberta Labour Relations Board, Occupational Health and Safety – Alberta, and Stone
Creek Resorts Inc.**

Respondents

**Reasons for Decision
of the
Honourable Justice J.C. Kubik**

INTRODUCTION

[1] Jon Astolfi (“Astolfi”) was a Senior Project Manager employed by Stone Creek Resorts Inc. (“Stone Creek”). On April 23, 2018, his employment was terminated. On August 16, 2019, he filed a Disciplinary Action Complaint against Stone Creek, related to allegations of harassment in the workplace.

[2] An Occupational Health and Safety Officer (“Officer”) investigated his complaint, concluding that Astolfi had complied with the *Occupational Health and Safety Act*, SA 2020, c 0-2.2 (“*OHS Act*”), and disciplinary action was taken against him, but there was no causal connection between his act of compliance and his termination. Rather, the Officer found that he had been terminated because he failed to report to work at the company office, as required.

[3] Astolfi appealed the Officer’s decision to the Alberta Labour Relations Board (“ALRB”), the “Appeal Body”, as defined by the *OHS Act*. In this decision I will refer to the Appeal Body which heard the initial appeal as the “Appeal Panel”. The Appeal Panel dismissed Astolfi’s appeal (“Appeal Decision”).

[4] Astolfi then sought reconsideration of the Appeal Decision pursuant to section 46(11) of the *OHS Act*. His application was denied (“Reconsideration Decision No. 1”), however the ALRB, recognizing an error in filing and processing of the application for reconsideration resubmitted it to a second Appeal Panel. In this decision I will refer to the second Appeal Panel as the “Appeal Body”. The Appeal Body dismissed Astolfi’s reconsideration application (“Reconsideration Decision No. 2”).

[5] Astolfi did not seek judicial review of the original Appeal Decision. The application before me is a judicial review of Reconsideration Decision No. 2.

[6] During the judicial review hearing, I gave oral reasons dismissing Astolfi’s application to adduce additional evidence on the basis that the evidence was irrelevant to the narrow issue on review (Reconsideration Decision No. 2). In addition, I was satisfied that the whole of the Certified Record of Proceedings was before me, and any procedural fairness argument could be advanced based on the Certified Record of Proceedings. As a result, this decision deals with the merits of the application for judicial review.

PRELIMINARY ISSUE

[7] Stone Creek raises a preliminary issue: that there is no right to judicial review of a reconsideration decision. Stone Creek states that the power of reconsideration rests exclusively with the Appeal Body and is wholly discretionary – to reconsider or not reconsider. Stone Creek argues that such a decision is not subject to judicial review.

[8] Sections 45 and 46 of the *OHS Act* apply to appeal, reconsideration and judicial review proceedings. These sections render the ALRB the Appeal Body with respect to decisions under the *OHS Act*.

[9] Pursuant to s.46(11), the Appeal Body has exclusive jurisdiction to hear, consider and decide any matter before it, and may at any time reconsider any order made and vary, revoke or affirm the order.

[10] Section 46(13) provides a right of judicial review, in the nature of certiorari or mandamus, of any order of the Appeal Body (emphasis added).

[11] Modern principles of statutory interpretation require courts “to take a unified contextual and purposive approach to the task... A court must consider not only the textual wording of the statutory provision in dispute, but also the purpose of that provision and all relevant context. That includes, the legislative scheme of which the provision forms a part” (Ruth Sullivan, Sixth-Edition (Markham: LexisNexis Canada, 2014) at 7-8; *Alberta v ENMAX Energy Corporation* 2018 ABCA 147.

[12] The Supreme Court of Canada in *Rizzo v Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, stated:

...

“...statutory interpretation cannot be founded on the wording of the legislation alone. The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”

...

[13] On its plain reading, the provisions of s. 46(11) allow an application for reconsideration to be considered by the Appeal Body. A decision to reconsider, or not reconsider, is an order of an Appeal Body because it either dismisses or allows an application for reconsideration. Therefore, by virtue of s. 46(13), such a reconsideration decision is subject to judicial review.

POSITION OF THE PARTIES

[14] Astolfi argues that the Appeal Body approached Reconsideration Decision No. 2 through too narrow a lens. He says that the Appeal Body failed to follow the causal chain between his complaint and termination, failed to consider the harassment complaint in the broader context of workplace violence, and failed to frame the consequence to him within this context. Effectively, he argues that the Appeal Body failed to properly consider the legal and factual matrix and this rendered their decision unreasonable and their process unfair.

[15] Stone Creek, on the other hand, argues that the Appeal Body rendered a reasonable decision focused on the narrow issue of whether to reconsider the Appeal Decision and guided by the relevant statutory provisions and tribunal jurisprudence.

STANDARD OF REVIEW

[16] Consistent with the Supreme Court of Canada’s decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [“*Vavilov*”], the presumptive standard of review is reasonableness. This presumption can be rebutted based on clear statutory language within the governing act or where the rule of law requires that correctness be applied.

[17] In this case, neither exception applies. There is no statutory language which ousts reasonableness review, and this is not a case involving a constitutional question, a question of law of central importance to the legal system or questions related to jurisdictional boundaries between two or more administrative bodies.

[18] Accordingly, the standard of review is reasonableness.

[19] As noted in *Vavilov*, reasonableness review begins with the reasons of the administrative decision maker. Reasons must be provided by an administrative decision maker, and those reasons must be transparent, intelligible and justified on the record. This requires the decision to be rational, based on logic and internally coherent. The reasons must respect the legal and factual record before the decision maker.

[20] In this case, the *OHS Act* provides statutory authority for Reconsideration Decision No. 2. In the context of the already broad statutory appeal powers, this section confers on the Appeal Body the discretionary power to reconsider its own decisions, including to vary, revoke or affirm any orders. As a result, a considerable degree of deference is owed to the Appeal Body on judicial review.

REASONABLENESS OF RECONSIDERATION DECISION NO. 2

[21] The Appeal Body was live to the relevant case law guiding its discretion to reconsider a decision, specifically quoting from *Wilson v Grande Yellowhead Public School Division* (Board File No. OHS2019-5) [*“Wilson”*] which had considered the *OHS Act* reconsideration provisions in the context of similar provisions contained in the *Labour Relations Code*, RSA 2000, c L-1.

[22] The Appeal Body summarized the principles guiding its reconsideration as derived from *Wilson*:

- Reconsideration is discretionary in nature.
- The scope of reconsideration is narrower than appeal or judicial review.
- Reconsideration is not a pre-requisite to a judicial review.
- An Appeal Body may exercise its discretion to reconsider a decision if it determines that it is appropriate to act to correct any substantial errors, or if reconsideration is appropriate to address procedural fairness concerns or new evidence. A substantial error is one which is grounded in a failure to select or apply the appropriate standard of review.
- Reconsideration will be rare in the absence of a substantial error in selecting or applying the appropriate standard of review.

[23] It also recognized that the Appeal Panel was engaged in a reasonableness review of the Officer’s decision, based on the standard of review as set out in *Ledcor Pipe & Infrastructure v Alberta Occupational Health and Safety*, Decision 2109 (Board File No. OHS 2020-6) [*“Ledcor”*].

[24] The first decision of the Appeal Body was to reject Astolfi’s application to adduce new evidence. The Appeal Body applied the reasoning in *Wilson*, ultimately concluding that the new evidence, an email thread between Astolfi and the Minister of Jobs, Economy and Trade (“Minister”), was not admissible. In coming to this conclusion, the Appeal Body determined that whether harassment was a workplace hazard was a legal question premised on statutory interpretation, not the opinion of the Minister. While the Appeal Body appreciated that extrinsic evidence could be an interpretative aid in the statutory construction of the term “harassment” it concluded that the informal email exchange was not akin to an interpretive aid as characterized in *Driedger on the Construction of Statutes*, 3rd ed. [Butterworths: 1994] at 469. The Appeal Body’s decision on this point was transparent, logical and internally coherent. It justified the conclusion reached and was therefore reasonable.

[25] In accordance with *Wilson*, the Appeal Body went on to review the issues for reconsideration as follows:

1. Whether the Appeal Panel assessed the fairness of the Officer’s process.
2. Whether the Appeal Panel applied the appropriate standard of review.
3. Whether the Appeal Panel erred in applying the standard of review.

[26] Assessed on the reasonableness standard, the Appeal Body’s decision was reasonable. The Appeal Body assessed each ground in accordance with *Wilson* and *Ledcor*.

[27] In relation to the fairness issue, it considered the reasons of the Appeal Panel in their review of the Officer's process, provided detailed reasons about the nature of the fairness complaint and analyzed the Appeal Panel's conclusion that the Officer's investigation process was procedurally fair. The Appeal Body provided clear, cogent and comprehensive reasons which accord with the record before them.

[28] In relation to whether the Appeal Panel applied the appropriate standard of review, the Appeal Body noted the Appeal Panel's application of the *Ledcor* standard, which required it to determine whether the Officer's report was reasonable on the record before him. The Appeal Body rejected Astolfi's argument that the Appeal Panel should have applied a correctness standard and provided detailed reasons as to the applicable standard of review. The Appeal Body's reasons are transparent, intelligible, and justified, and provide a rationale chain of analysis consistent with their conclusion.

[29] Finally, in relation to whether the Appeal Panel had erred in the application of the standard of review, the Appeal Body provided a comprehensive overview of the grounds for reconsideration and the decision of the Appeal Panel. The Appeal Board recognized that its role was not to function as an appellate body, but rather to exercise its discretionary power on a narrow basis. In doing so, it respected the statutory power conferred on the Appeal Panel in the context of the factual matrix and legal framework within which it was considering the Officer's conclusions. The Appeal Body limited its role to the narrow issue of reconsideration of the Appeal Panel's decision.

[30] As such, the Appeal Body's conclusion that they should not exercise their discretion to reconsider the Appeal Decision was reasonable. For these reasons the Appeal Body's process was also procedurally fair. The Appeal Body's role was not to step into the shoes of the Appeal Panel and reconsider the evidence at the original hearing. Instead, it was limited to assessing whether the Appeal Panel acted fairly, chose the correct standard of review and properly applied it.

[31] The application for judicial review is dismissed.

COSTS

Stone Creek is entitled to costs of this Judicial Review, calculated pursuant to Column 1 of Schedule C, in the total sum of \$3,375 plus disbursements incurred. Stone Creek had requested costs on an enhanced basis in the range of Column 3 to Column 5. On a review of the factors set out in r.10.33 of the *Alberta Rules of Court* I am satisfied that this was a non-complex action, that Astolfi was pursuing a remedy available to him under the *OHS Act* and there was no misconduct that prolonged or delayed the judicial review application. I acknowledge that this matter has been before the Board on multiple occasions, however the exercise of rights conferred by statute in the absence of delay or misconduct does not, in my view, give rise to an enhanced costs award. The costs ordered are payable forthwith.

Heard on the 25th day of November 2025.

Dated at the City of Calgary, Alberta this 20th day of January 2026.

J.C. Kubik
J.C.K.B.A.

Appearances:

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Self-Represented Litigant

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