



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION**

**Citation:** *Walsh v. Newfoundland and Labrador Association of Public and Private Employees*, 2026 NLSC 15  
**Date:** February 13, 2026  
**Docket:** 202401G4119

BETWEEN:

**MARK WALSH**

APPLICANT

AND:

**NEWFOUNDLAND AND LABRADOR  
ASSOCIATION OF PUBLIC AND  
PRIVATE EMPLOYEES**

FIRST RESPONDENT

AND:

**HIS MAJESTY THE KING IN RIGHT  
OF NEWFOUNDLAND AND  
LABRADOR, DEPARTMENT OF  
TRANSPORTATION AND  
INFRASTRUCTURE**

SECOND RESPONDENT

AND:

**THE NEWFOUNDLAND AND LABRADOR  
LABOUR RELATIONS BOARD**

THIRD RESPONDENT

**Corrected Judgment:** The text of the original judgment was corrected on March 2, 2026 and a description of the correction is appended.

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**Before:** Justice Trina D. Simms

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*(Human Rights Commission)*, 2025 NLSC 152; *Association of Allied Health Professionals v. Eastern Regional Integrated Health Authority*, 2025 NLCA 1

**STATUTES CONSIDERED:** *Public Services Collective Bargaining Act*, R.S.N.L. 1990, c. P-42

## **REASONS FOR JUDGMENT**

**SIMMS, J.:**

### **OVERVIEW**

[1] Mark Walsh has applied to this Court for a judicial review of an administrative decision made by the Newfoundland and Labrador Labour Relations Board (“Board”).

[2] Mr. Walsh made a Duty of Fair Representation complaint pursuant to section 43 of the *Public Services Collective Bargaining Act*, R.S.N.L. 1990, c. P-42, against the Newfoundland and Labrador Association of Public and Private Employees (“Union”) on December 8<sup>th</sup>, 2022. On June 27<sup>th</sup>, 2023, the Board issued an order dismissing the complaint, and on July 20<sup>th</sup>, 2023, at the request of Mr. Walsh, the Board issued written reasons for its decision.

[3] On September 27<sup>th</sup>, 2023, Mr. Walsh applied to have the Board reconsider, pursuant to section 45(2) of the *Act*. On January 24<sup>th</sup>, 2024, the Board declined to reconsider its decision. Again, at the request of Mr. Walsh, the Board provided written reasons for its decision.

[4] On July 16<sup>th</sup>, 2024, Mr. Walsh applied to this Court for a judicial review of the Board’s decision.

## ISSUE

[5] The sole issue I must decide is whether the Board's decision to dismiss Mr. Walsh's Duty of Fair Representation complaint was reasonable.

### Relevant Background

[6] To appropriately review this matter, it is necessary to detail some of the background facts. These facts are gathered from the Board's Hearing Record.

[7] Mr. Walsh is a marine services cook with the Department of Transportation and Infrastructure, Government of Newfoundland and Labrador ("Employer"). His employment is governed by the Marine Services Division Collective Agreement, to which the Employer and Union are parties.

[8] The issues that brought this matter to the union representative, to the Board, and now before this Court, began when Mr. Walsh provided his Employer with a medical note, dated September 19<sup>th</sup>, 2022, stating that he could not do extra shifts due to medical issues.

[9] The medical note that Mr. Walsh submitted did not provide adequate information to the Employer. It stated that Mr. Walsh had "several medical issues", but it did not detail what they were or, more importantly, what he would require from the Employer to accommodate his continued employment. As a result, the medical note raised concerns with the Employer about whether Mr. Walsh could continue to comply with the Transport Canada Regulations governing his marine medical clearance. Though the note explained that Mr. Walsh could not work extra shifts, it did not specify whether he could remain on the vessel beyond the scheduled fourteen-day shift if relief was not immediately available.

[10] Mr. Walsh met with Krystal Rice, the Membership Servicing Officer (“MSO”), Colleen Power, an Integrated Disability Manager, and Stephen Power, the Integrated Disability Director, on September 29<sup>th</sup>, 2022. At that meeting, Mr. Walsh was asked to provide further information regarding his medical restrictions. The Employer sent a letter to Mr. Walsh on October 6<sup>th</sup>, 2022, with a form for his physician to complete, requesting further information. Specifically, the form asked whether Mr. Walsh’s medical condition prevented him from remaining onboard if he could not be relieved as scheduled, and whether Transport Canada was aware of any change in Mr. Walsh’s medical condition.

[11] Mr. Walsh agreed to provide the requested information before his scheduled return to work. Unfortunately, his medical appointment was cancelled, and he was unable to provide the information before that time. On October 27<sup>th</sup>, 2022, the MSO advised Mr. Walsh that failure to provide the requested documentation would result in a delay in his return to work.

[12] The Employer followed up with Transport Canada Marine Medical and determined that Mr. Walsh’s marine medical certificate did not contain a limitation regarding the number of days on board the vessel. As a result, on October 25<sup>th</sup>, 2022, Mr. Walsh was advised that his return to work could not be accommodated at that time, because the Employer was unable to guarantee the fourteen-day limit that his physician had indicated was required.

[13] Communication continued between Mr. Walsh, the MSO, and the Employer to gather further clarity on Mr. Walsh’s limitations and to work toward Mr. Walsh's return to the vessel.

[14] On November 17<sup>th</sup>, 2022, Mr. Walsh asked the MSO to file a grievance. The Union declined to do so, writing to Mr. Walsh that “there is nothing there that is grievable.” In the same email, the MSO wrote, “If you can tell me where you feel there is a violation I would be happy to take another look.”

[15] On November 18<sup>th</sup>, 2022, Mr. Walsh's physician provided another note indicating that Mr. Walsh could remain on board if he had sufficient medical supplies and medicine for six weeks.

[16] On December 1<sup>st</sup>, 2022, Mr. Walsh wrote a letter to the MSO explaining that he believed a grievance was required because the Employer was forcing him to work six-week shifts, whereas the Collective Agreement clearly refers to fourteen-day shifts. The Union did not file a grievance.

[17] Ongoing communication ensued, and Mr. Walsh was permitted to return to work on December 13<sup>th</sup>, 2022.

### **Duty of Fair Representation Complaint**

[18] Mr. Walsh made a Duty of Fair Representation complaint against the Union on December 8<sup>th</sup>, 2022. His complaint outlines the context of the actions of the Employer, which he believes the Union should have grieved. The crux of Mr. Walsh's complaint is that the Employer required him to work beyond his regular fourteen-day shift in breach of the Collective Agreement and the Union failed to file the necessary grievance.

[19] He indicated that he could not work beyond the fourteen-day shift because of a medical condition that required him to attend regularly scheduled medical appointments on shore. He outlined that he would schedule his medical appointments during his two weeks off, between his fourteen-day shifts. However, according to the details outlined in his Complaint Form, in 2022, his Employer began requiring him to remain on the ship for six-week shifts because no one was available to relieve him between his regularly scheduled two-week shifts. When he provided a medical note indicating that he could not work extra shifts, the Employer did not accommodate him, and instead sought additional medical information and did not allow him to return to work.

[20] Mr. Walsh identified the following as the remedy sought: “I am seeking to have my grievance put forward, be able to return to my position, and reimbursed for all lost time and money’s [sic].” (Complaint Form, para. 10 – Tab 3, Hearing Record of the Labour Relations Board)

[21] Mr. Walsh relied upon the Marine Services Division Collective Agreement<sup>1</sup> (as referenced by Counsel at Tab 1 of the Hearing Record of the Labour Relations Board), Article 10(c)(i) which states: “The shift rotation for the Marine Services, except Bell Island run, shall be fourteen (14) days on and fourteen (14) days off.”

[22] By the time Mr. Walsh’s complaint was completed with the Board, he had returned to work. There is no indication in the record before me that Mr. Walsh was not returned to the same position he occupied before these issues arose. While Mr. Walsh claims he lost his employment, the record does not support that assertion. Rather, it appears that Mr. Walsh was not permitted to return to work until the Employer was provided with sufficient medical information to ensure that Mr. Walsh’s medical issues did not pose a safety concern for himself or others on board.

[23] Mr. Walsh indicated in his Complaint Form that he believed the actions or conduct of the Union official were arbitrary, in that his complaint was not investigated. He noted that the union representative spoke with him and his Employer, then informed him that there was nothing to grieve.

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<sup>1</sup> Marine Services Division Collective Agreement between Her Majesty the Queen in Right of Newfoundland and Labrador, represented herein by Treasury Board; and The Newfoundland and Labrador Association of Public and Private Employees, expiring on March 31, 2016.

[24] He also indicated that the union official's actions or conduct were discriminatory. He wrote that the Union became aware that he was an employee with a disability and stated that the Union does not deal with disability issues.

[25] Finally, he indicated he believed the Union acted in bad faith based on his belief that the Union felt he was a problem or a troublemaker, and as a result, they ignored the merits of his complaint.

### **The Decision of the Board**

[26] The Board issued an Order dismissing the complaint, and on July 20<sup>th</sup>, 2023, at the request of Mr. Walsh, the Board issued written reasons for its decision.

[27] In its reasons, the Board referred to *C.M.S.G. v. Gagnon*, [1984] 1 S.C.R. 509, to outline the five general principles governing a union's duty of representation with respect to grievances (*Walsh and NAPE, Re*, 2023 N.L.L.R.B. No. 14, at para. 6):

1. The exclusive power conferred on a union to act as a spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.
2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.
3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.
4. The union's decisions must not be arbitrary, capricious, discriminating or wrongful.
5. The representation of the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility toward the employee.

[28] The Board also took note of appropriate jurisprudence defining what is arbitrary, discriminatory, or in bad faith, with reference to *Vijeyaratnam v. CUPE 250* (2022), 2022 CarswellOnt 6061 (L.R.B.), and further specified core legal principles applied to a claim for breach of the Duty of Fair Representation.

[29] The Board determined that the Union met with Mr. Walsh and the Employer, reviewed the Collective Agreement, and investigated the matter. The Board determined that the MSO advised Mr. Walsh of the importance of providing the requested medical information. The Board noted that the Union made a choice not to file the grievance. However, it acknowledged the fact that the Union did take steps to work with Mr. Walsh to ultimately get him back to work.

[30] The Board's reasons concluded by stating the Union did not act in a manner that was arbitrary, discriminatory, or in bad faith in considering whether to file a grievance against the Employer, and it dismissed the complaint.

### **The Standard of Review**

[31] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, establishes a presumptive standard of reasonableness applicable in judicial review of an administrative decision. All parties in this matter agree that reasonableness is the standard of review. They differ in whether the Board appropriately applied the reasonableness standard.

[32] The Supreme Court of Canada in *Vavilov*, at paras. 12 and 13, explains that reasonableness review is meant to ensure that courts intervene in administrative matters only when truly necessary to safeguard the legality, rationality, and fairness of the administrative process. A reviewing court must adopt a posture of restraint and respect for the distinct role of administrative decision makers. The Court instructs reviewing courts to consider the outcome in light of its underlying rationale, to ensure the decision as a whole is transparent, intelligible, and justified. Judicial review concerns both the outcome and the reasoning process that led to it. The

administrative review process must not be a “rubber-stamping process” or a means to shelter decision makers from accountability.

[33] With this direction, the Supreme Court of Canada identifies two types of fundamental flaws that tend to render a decision unreasonable. They are:

1. Failure of rationality internal to the reasoning process – the decision must be based on internally coherent reasoning that is both rational and logical. Not a “line by line treasure hunt for error” – the reviewing court must be able to trace the decision maker’s reasoning without encountering any fatal flaws in its overarching logic. It will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis. Or if the conclusion reached cannot follow from the analysis undertaken, or if the reasons read in conjunction with the record do not make it possible to understand the decision maker’s reasoning on a critical point. Or if there are clear logical fallacies.
2. When the decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it. The decision must be justified in relation to the constellation of law and facts that are relevant to the decision.

[34] The Court must also be mindful of the presumed relative expertise of an administrative decision maker created by legislation. The Board exists to administer several regulatory functions, and as Counsel for the Union submits, the Board possesses significant expertise in labour and employment law, and the applicable rules governing their review process. The Court must presume that the legislature intended the Board to fulfill its mandate and to interpret the law applicable to the issues it addresses.

[35] As Justice Chaytor writes in *Dawe v. Newfoundland and Labrador (Human Rights Commission)*, 2025 NLSC 152, at para. 58:

Reasonableness review is about process and outcome. *How* the decision is made is, itself, important. When written reasons are provided, as is the case here, reasonableness review puts those reasons first and seeks to understand the

reasoning process the decision maker followed to arrive at their conclusion. So long as the decision was reasonable, then the reviewing court ought not to displace it.

[36] The reviewing court must consider only whether the decision maker's decision, including both the rationale for the decision and the outcome it led to, was unreasonable, and the Court must do so in light of the relevant factual and legal constraints on the decision maker in order to determine whether the decision is reasonable.

[37] The Newfoundland and Labrador Court of Appeal recently articulated this standard of review in *Association of Allied Health Professionals v. Eastern Regional Integrated Health Authority*, 2025 NLCA 1. At paragraph 13, Justice O'Brien writes:

In conducting a reasonableness review of an administrative decision, the reviewing court should ask whether the decision bears the hallmarks of reasonableness – justification, transparency, and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear upon it. (*Vavilov*, at para 99). To be reasonable, a decision must be based on reasoning that is both rational and logical. Although a reasonableness review is not a “line-by-line treasure hunt for error”, the reviewing court must be able to trace the decision maker’s reasoning without encountering any fatal flaws in its overarching logic (*Vavilov*, at para 102). If the decision meets the requirements of reasonableness, the reviewing court must defer to it and cannot substitute its own view of the result (*Vavilov*, at paras. 83, 85).

## ANALYSIS

[38] The Board provided written reasons for its decision to dismiss Mr. Walsh’s complaint. My analysis must consider whether the Board’s reasoning is rational and logical, both in rationale and outcome, in light of the relevant legal and factual restraints on the decision maker.

[39] Based on the applicable law, I have determined that the Board’s decision is reasonable.

[40] Due to Transport Canada Regulations, Mr. Walsh's initial medical note raised concerns about the Employer's ability to accommodate Mr. Walsh, because they could not guarantee that he could always leave the vessel after fourteen days. Mr. Walsh has framed this as an issue regarding scheduling and mandatory overtime before this Court. He asserts that the Board did not address this, and their decision was therefore arbitrary. I do not agree.

[41] Because of the nature of the initial medical note, the manner in which the Employer could be responsive to Mr. Walsh's needs required a different approach than Mr. Walsh had anticipated. Mr. Walsh's concern was with the possibility of having to work three two-week shifts in a row, due to his necessity of having to be on shore for medical appointments. However, because the initial medical note was drafted in such a way that limited Mr. Walsh strictly to a fourteen-day shift – which the Employer could not guarantee due to Transport Canada regulations - the focus became gathering additional medical information to determine how Mr. Walsh could be returned to work.

[42] The effect of the note was that Mr. Walsh had to provide further medical information to reconcile the note (which limited him to maximum fourteen-day shifts) and his current Transport Canada Medical Certificate status (which contained no limitation on the number of consecutive days he could be onboard a vessel) before he could return to work. It is clear on the record that this arose as a safety concern for both Mr. Walsh and users of the marine service with which he was employed.

[43] Despite his assertions, it does not appear that Mr. Walsh was terminated from his employment. Rather, the record suggests that Mr. Walsh agreed to provide further medical information before his initially scheduled return to shift. He did not do so, and as a result his return to work was delayed.

### **Discriminatory Conduct, Compulsory Overtime, and Loss of Wages**

[44] I will address some assertions made by Mr. Walsh that require a brief analysis. Mr. Walsh argues the Board's decision was arbitrary because it did not address the \$5000 loss incurred by him due to having been terminated, and without regard to the

breach of contract and discriminatory conduct of the Employer. The Applicant also asserts that the Union failed to ensure that overtime compulsion was not used in a capricious and abusive manner against employees who require accommodation due to serious medical conditions.

[45] I do not agree that the Board erred in declining to address these specific concerns raised by Mr. Walsh. These assertions are simply not supported in the record that was put before the Board. While Mr. Walsh's concern was in working six-week shifts due to a lack of staffing resources, he framed his concern as it related to his own medical needs. Mr. Walsh takes the position that he was not allowed to work because he could not work the extra shifts, but the record does not support this assertion. Rather, the record shows that when Mr. Walsh raised the issue with the Union, the MSO and the Employer sought to clarify the medical information that Mr. Walsh provided in an effort to attempt accommodation. The Board's understanding of this context is clear in their review of the facts.

[46] In relation to compensation of losses, as is pointed out by all Respondents, Mr. Walsh's request for reimbursement for lost time and money is beyond the jurisdiction of the Board in its authority under section 43(5) of the *Act*. I agree. The Board's choice not to address this request is not an error or an oversight. Given the nature of Mr. Walsh's complaint to the Board, there was one thing for the Board to address, and that was the Duty of Fair Representation. The Board addressed it accordingly.

[47] With respect to the claim that the Union's actions were discriminatory and in bad faith, I do not intend to address at length the fact that the Board's decision did not specifically address these arguments. I do not believe that the Board erred in doing so.

[48] There is nothing in the record to support these assertions. Mr. Walsh takes the position that the Union's actions were discriminatory and in bad faith simply because the Union did not agree that the situation required a grievance. Mr. Walsh provided the Employer with a medical note, prompting the Employer to take steps to determine how it could accommodate Mr. Walsh. The record indicates that the Union chose not to file a grievance because Mr. Walsh had not established a violation of the Collective Agreement.

[49] The Board considered the Union's conduct on the facts of the case and properly applied the principles outlined in *Vijeyaratnam*, regarding a claim for a breach of Duty of Fair Representation. Among those is the principle that the duty of fair representation does not require a Union to file a grievance or take a grievance to arbitration just because an employee wants it to.

[50] Though the Board's reasons are brief, it considered the matter within the relevant factual and legal constraints. The Board turned its mind to the merits of the complaint in light of the circumstances and appropriately examined the considerations and steps taken by the Union. It made a reasonable decision that is justified, transparent, and intelligible both in the rationale and the outcome. There is no failure of rationality internal to the reasoning process, and the decision is not untenable in light of the factual and legal restraints that bear upon it.

[51] My conclusion, having considered the outcome in light of its underlying rationale, is that the Board's decision as a whole is reasonable because it demonstrates the required hallmarks of justification, transparency, and intelligibility.

## **DISPOSITION**

[52] The application to quash the decision of the Board and remit the matter for reconsideration is dismissed.

[53] The Applicant and the First Respondent sought costs. In my discretion, I have declined to award costs in this matter.

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**TRINA D. SIMMS**  
Justice

## **APPENDIX**

Correction made on March 2, 2026:

1. Counsel appearing on behalf of the Second Respondent is corrected to read 'Duncan J. Allison'.