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	May 14, 2024		
	14 mai 2024		
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Court File No.

**FEDERAL COURT**

Between:

**Daniele Carlone**

Applicant

-and-

**Attorney General of Canada**

Respondent

Application under Section 18 of the Federal Courts Act

FORM 301 Rule 301  
**Notice of Application**

**(General Heading — Use Form 66)**  
(Court seal)

## Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at the Federal Court, located at 30 McGill Street Montréal, QC, H2Y 3Z7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the [Federal Courts Rules](#) and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the [Federal Courts Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 10<sup>th</sup> 2024

Issued by: (Registry Officer)

Address of local office:

## TO THE RESPONDENTS:

Respondent:

Canadian Industrial Relations Board  
C.D. Howe Building  
240 Sparks Street  
4<sup>th</sup> Floor West  
Ottawa, Ontario  
K1A 0X8

Respondent:

Mr. Dave Flowers  
President and Directing General Chairperson  
International Association of Machinists and Aerospace Workers  
2580 Drew Road, Suite 203  
Mississauga, Ontario  
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(905) 671-3192

Respondent:

Ms. Vanessa Mastromonaco  
Paralegal Specialist, Labour and Employment  
Air Canada, Air Canada Centre  
Law Branch, zip 1276  
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(514) 422-5461

# Application

This is an application for judicial review in respect of

The decision Carlone 2024 CIRB LD 5330, made by the Canada Industrial Relations Board on April 16<sup>th</sup> 2024. The decision corresponds to file 037038-C.

- The decision of Board to not proceed with the Section 37 Duty of Fair Representation complaint as it was deemed untimely.

The applicant makes application for:

1. The Board to reconsider its decision and review the complaint with the new information provided.
2. The Board to consider applying section 16(*m.1*) of the Code to extend the time limits for instituting a proceeding.
3. The Board to review the complaint by a panel that does not include the original three members of the first panel, and have the original decision over-turned.

The grounds for the application are:

1. The date that was used by the Board as its reference point for the 90-day period was incorrect. The Board stated that the Applicant had received a letter from the General Chairperson (GC) on May 2<sup>nd</sup> 2023 (in the decision, the Board cited this date on three occasions). As referenced in the DFR complaint, the chronological summary, as well as the emails included in the list of documents for file 037038-C, there was no such letter received by the Applicant on this date. In the correspondence with the union (via email), the GC specifically said that the date on the letter was incorrect. The CIRB panel stipulated in their decision that all of the information provided was reviewed. This erroneous date was brought to the attention of the Board in several forms and in different instances. Due to the importance of this detail, it brings into question if all of the information provided was thoroughly reviewed. In addition, the GC's wrongly dated letter also had other issues:

- The letter had a header that didn't correspond to the subject of its contents, the Applicant's name was incorrectly spelled, along with the date being incorrect;
- The information provided within the letter was not reflective of the actual facts or the timeline of previous communications and events, with several important omissions;
- There was no clear reason as to why or how the decision was made;

2. The letter in question was sent to the Applicant even before he was ever given a chance to see, sign, or be aware of the actual details of the grievance that was filed on his behalf and presented to the Employer.
3. Despite asking the GC for clarification and reasons for the decision, the Applicant was only referred to the President and Directing General Chairperson (PDGC) for clarification.

4. The PDGC also avoided answering any of the Applicant's requests for details on what the union's decision was based on, reasoning, clarification, and what he understood of the Applicant's case. In *Jean-Michel Chenier*, 2011 CIRB 596, the Board stated the following:

[100] In the instant matter, the complainant really did face a lack of communication on the part of the union and the fact that he was deprived of the opportunity to convince the union to change its decision during the period allowed for in the appeal procedure contained in the union's by-laws did prejudice his position.

5. New information came to the attention of the Applicant that there were other employees (IAMAW union members) that were terminated in similar circumstances, and that they were offered arbitration and/or different options for them to regain their employment with the company. At the time, the Applicant had asked both the GC and PDGC if they were aware of such cases, as another IAMAW representative had previously made light of in 2022. The GC hadn't answered the question, while the PDGC flat out said that he was not aware of any. The Applicant has since learned that both the GC and/or PDGC were directly involved in those cases. In *Scott*, 2014 CIRB 710, the Board stated:

[144] The Board has concerns when a trade union fails to tell a member its reasons for not proceeding to arbitration. How can a union member realistically file an internal union appeal if he/she has no idea why the union decided not to go to arbitration? How can that member argue that the union's officers might have misunderstood the evidence, especially if some similarly situated employees were reinstated, if the trade union does not provide any explanation of its reasons?

6. The Applicant performed his due diligence in filing the DFR complaint with the CIRB. He inquired and followed the recommendations of the two CIRB officers throughout the time that he was dealing with the union, and after the union's decision of not proceeding further.
7. The Applicant contracted Covid-19 in the summer of 2023. Had the Applicant known of the timeline considered by the Board, he would have asked for an extension on these grounds as he was incapacitated.

This application will be supported by the following material: *(List the supporting affidavits, including documentary exhibits, and the portions of transcripts to be used.)*

*(If the applicant wishes a tribunal to forward material to the Registry, add the following paragraph:)*

The applicant requests (*Canadian Industrial Relations Board*) to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the (*Canadian Industrial Relations Board*) to the applicant and to the Registry: (all materials associated with File 037038-C and Decision Carlone 2024 CIRB LD 5330)

May 10<sup>th</sup> 2023

Applicant

A handwritten signature in black ink that reads "D. Carlone". The letter "D" is large and stylized, followed by a period and the name "Carlone" in a cursive script.

Daniele Carlone

4745 av des Érables

Montreal, QC

H2H 2E1

[dannycarlone@gmail.com](mailto:dannycarlone@gmail.com)

514-561-0935

*(Signature of solicitor or applicant)*

*(Name, address and telephone and fax numbers of solicitor or applicant)*

[SOR/2021-151, s. 22](#)