

FILED	FEDERAL COURT COUR FÉDÉRALE	DÉPOSÉ
	AOUT . 9 2024 AUG . 9 2024	
	FRANK FEDORAK (FAD)	
VANCOUVER, BC		1

Court File No. A-252-24

FEDERAL COURT OF APPEAL

BETWEEN:

PACIFIC COAST TERMINALS CO. AND BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION

Applicant(s)

AND:

NENAD HABUS AND THE INTERNATIONAL LONGSHORE & WAREHOUSE UNION, LOCAL 500

Respondent(s)

APPLICATION UNDER SECTION 18.1 OF THE *FEDERAL COURTS ACT*

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 Pacific Centre, P.O. Box 10065, 701 West Georgia Street, Vancouver, British Columbia V7Y 1B6.

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.

Date: AUG 09 2024

ORIGINAL SIGNED BY
SVETLANA DOBROTA
Issued by A SIGNÉ ORIGINAL
(Registry Officer)

ADDRESS OF LOCAL OFFICE:

FEDERAL COURT OF APPEAL
Pacific Centre, P.O. Box 10065
701 West Georgia Street
Vancouver, BC, V7Y1 B6

TO:

CANADA INDUSTRIAL RELATIONS BOARD
Western Regional Office
501- 300 West Georgia St
Vancouver, BC, V6B 6B4

AND TO:

NENAD HABUS
c/o Victory Square Law Office LLP (Attention: Rebecca Kantweg)
Suite 710, 777 Hornby Street
Vancouver, BC, V6Z 1S4

AND TO:

THE INTERNATIONAL LONGSHORE & WAREHOUSE UNION, LOCAL 500
c/o Victory Square Law Office LLP (Attention: Rebecca Kantweg)
Suite 710, 777 Hornby Street
Vancouver, BC, V6Z 1S4

AND TO:

THE ATTORNEY GENERAL OF CANADA
Department of Justice Canada (BC Regional Office)
900 - 840 Howe Street
Vancouver, BC, V6Z 2S9

I. APPLICATION FOR JUDICIAL REVIEW

1. This is an application for judicial review in respect of a decision of the Canada Industrial Relations Board (“**CIRB**” or “**Board**”) dated July 10, 2024 and indexed as 2024 CIRB LD 5393 (the “**Decision**”).

II. RELIEF SOUGHT

2. The Applicants, Pacific Coast Terminals Co. and the British Columbia Maritime Employers Association (together, the “**Applicants**”) makes application for:
 - (a) an order that the July 10, 2024 decision of the CIRB indexed as 2024 CIRB LD 5393 (the “**Decision**”) be quashed and the reprisal complaint filed with the CIRB by the Respondent, Nenad Habus (“**Habus**”) pursuant to section 133(1) of Part II (Occupational Health and Safety) of the *Canada Labour Code*, R.S.C. 1985, c. L-2 [**Code**] be dismissed;
 - (b) in the alternative, an order that the Decision be quashed and remitted to the CIRB for reconsideration;
 - (c) costs; and
 - (d) such further and other relief as counsel for the Applicants may advise and/or this Honourable Court considers appropriate or just.

III. GROUNDS FOR APPLICATION

1. The Applicants apply for judicial review of the Decision under sections 18, 18.1, 28(1)(h), 28(2) and 28(3) of the *Federal Courts Act*, R.S.C., 1985 c. F-7 [**Act**]; and rules 300 and 306 of the *Federal Court Rules*, SOR 98/106 [**Rules**].
2. The Decision concerns a complaint made to the CIRB by the Respondents on or around January 9, 2023, pursuant to s. 133(1) of the *Code* alleging a violation of s. 147 of the *Code* by the Applicants (the “**Complaint**”). Specifically, in the Complaint the Respondents allege that the Applicants retaliated against Habus for refusing unsafe work.
3. The Applicants deny the allegations in the Complaint. Habus’s discipline was unconnected to his raising occupational health and safety concerns but related solely to his insubordinate conduct in failing or refusing to participate in the work refusal process lawfully directed by the Applicants, including its requests for an interview.
4. The parties made written submissions to the Board with respect to the Complaint. including:
 - (a) a response to the Complaint filed by the Applicants on or around February 13, 2023;
 - (b) a reply submission filed by the Respondents on or around February 27, 2023;

- (c) a sur-reply submissions filed by the Applicants on or around April 6, 2023; and
- (d) a reply to the sur-reply submissions filed by the Respondents on or around April 21, 2023.

(Collectively, the “**Submission Process**”)

- 5. Throughout the Submission Process both the Applicants and Respondents maintained that the adjudicator should hold an oral hearing in relation to the Complaint.
- 6. Notwithstanding that request, in the Decision the Board made the following non-exhaustive determinations:
 - (a) that the documentation before the Board was sufficient for it to issue the Decision without an oral hearing pursuant to s. 16.1 of the *Code*;
 - (b) There was a “clear and direct nexus between [Habus’s] work refusal and the [Applicants] discipline ... for the manner of his participation in the Part II process or in the investigation of the work refusal” to grant the Complaint pursuant to s. 133 of the *Code*.

In the Decision, the Board:

- (c) based its determination on erroneous and/or unreasonable findings of fact and/or law;
- (d) erred in its interpretation of ss. 128, 133 and/or 147 of the *Code* by, among other things:
 - (i) failing to take statutory requirements under ss. 125 and 126 of the *Code* into account, among others, in rendering its Decision; and/or
 - (ii) reading additional words into the *Code* unsupported by the wording of the legislation;
- (e) based its determination on entirely or predominantly irrelevant factors and/or without regard to the material before it;
- (f) erred in ignoring or failing to consider material evidence in finding that there was a “clear and direct nexus” between Habus’s work refusal and any discipline implemented by the Applicants;
- (g) failed to observe natural justice and procedural fairness when it rendered its Decision under section 16.1 of the *Code*, without permitting the Applicants (or Respondents) to put forward a full position on the merits of the case.

IV. SUPPORTING MATERIAL

1. This application will be supported by the following material:
 - (a) Affidavit material to be served and filed in accordance with s. 306 of the *Rules*, including the evidence provided and the submissions made to the CIRB in the course of the hearing.
 - (b) The record before the CIRB.
 - (c) Any further materials that counsel may advise or that the Court deems appropriate.

V. REQUESTED DOCUMENTS

1. The Applicants request the CIRB to send a certified copy of the following material that is not in the possession of the Applicants but is in the possession of the Board to the Applicants and to the Registry:
 - (a) The full record of all material before the CIRB relating to its decision of July 10, 2024 indexed as 2024 CIRB LD 5393.
 - (b) Any other documentation or information considered by the CIRB in reaching its decision in 2024 CIRB LD 5393

All of which is respectfully submitted.

August 8, 2024



Ryan Copeland and Jaime H. Hoopes,
Counsel for the Applicants, PCT and BCMEA

Roper Greyell LLP
 1850-745 Thurlow Street
 Vancouver, BC V6E 0C5
 Tel: 604-806-0922
 rcopeland@ropergreyell.com
 jhoopes@ropergreyell.com

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the _____

AUG 09 2024

day of _____ A.D. 20 _____

AUG 09 2024

Dated this _____ day of _____ 20 _____

SVETLANA DOBROTA
 REGISTRY OFFICER
 AGENT DU GREFFE

