

those circumstances, this court found that the plaintiff was an office holder in the University, which is created by statute and receives public funds. While, as I have said, the respondent managed a large staff and budget, his employment does not otherwise have the attributes of the plaintiff's employment in **Hanis**. I would dismiss the cross-appeal.

DISPOSITION

[55] Accordingly, I would allow the appeal, set aside the judgment and direct that the City pay the respondent in accordance with its offer in December 8, 1998. I would dismiss the cross-appeal. The appellant should serve and file its submissions on costs within 14 days of the release of these reasons. The respondent will have 14 days to serve and file his response.

ENDORSEMENT ON COSTS

[56] **By the Court:** This appeal involved a long-term employee of the City of North York who, as a result of municipal amalgamation, and through no fault of his own, lost his employment in the circumstances described in the Reasons for Judgment on the appeal. We think that in all the circumstances a relatively modest costs award is appropriate. Accordingly, the costs of the appeal and of the proceedings below including the trial and the motion before Macdonald, J., are fixed at \$40,000 inclusive of disbursements and GST.

Appeal allowed.

Editor: Elizabeth M.A. Turgeon/gs

Dervent Thompson (applicant) v. Ontario
Labour Relations Board, Pepsi-Cola
Canada Ltd. and Teamsters Local
Union 938 (respondents)
(314/02)

**Indexed As: Thompson v. Pepsi-Cola
Canada Ltd. et al.**

Court of Ontario
Superior Court of Justice
Divisional Court
Lane, Brockenshire and Cameron, JJ.
March 31, 2003.

Summary:

The applicant applied for judicial review of a decision of the Ontario Labour Relations Board under s. 99(3) of the Ontario Labour Relations Act to dismiss his application to the Board under ss. 74 and 96 of the Act for delay.

The Ontario Divisional Court allowed the application, set aside the Board's order and remitted the applicant's application to the Board for further consideration.

Administrative Law - Topic 2493

Natural justice - Procedure - At hearing -
Right to make submissions - [See **Labour
Law - Topic 665**].

Administrative Law - Topic 3306

Judicial review - General - Bars - Delay -
[See **Labour Law - Topic 630**].

Labour Law - Topic 630

Labour relations boards and judicial review
- Judicial review - Bars - Delay - The
applicant applied for judicial review of a
decision of the Ontario Labour Relations
Board dated November 15, 2001 - The
Ontario Divisional Court stated that the

delay in applying for judicial review from November 15, 2001 to May 29, 2002, was not insignificant, but had been satisfactorily explained by the applicant's impecuniosity - See paragraph 3.

Labour Law - Topic 665

Labour relations boards and judicial review - Natural justice - Denial of - Hearing - Opportunity to be heard - The applicant applied for judicial review of a decision of the Ontario Labour Relations Board under s. 99(3) of the Ontario Labour Relations Act to dismiss his application to the Board under ss. 74 and 96 of the Act for delay - The Ontario Divisional Court allowed the application, set aside the Board's order and remitted the applicant's application to the Board for further consideration - The delay issue was first raised in the union's responding materials and the applicant had not been given an opportunity to address the issue - While the Board was master of its procedure, it was contrary to the principles of natural justice to decide a matter on grounds which the applicant was not afforded an opportunity to address - See paragraph 2.

Counsel:

Kike Roach, for the applicant;
Voy T. Stelmaszynski, for the Ontario Labour Relations Board;
Norman L. Jesin, for the Teamsters Local Union 938.

This application was heard on March 31, 2003, before Lane, Brockenshire and Cameron, JJ., of the Ontario Divisional Court. The following judgment of the Divisional Court was delivered orally by Cameron, J.A., on March 31, 2003, and was released on April 4, 2003.

[1] **Cameron, J.** [orally]: The applicant complains of the decision of the Ontario Labour Relations Board under s. 99(3) to dismiss his application to the board under ss. 74 and 96 of the **Ontario Labour Relations Act** for delay.

[2] The delay was first raised as an issue by the union in its responding materials. The applicant was not given an opportunity to address the issue of delay. While the Ontario Labour Relations Board is master of its procedure, it is contrary to the principles of natural justice to decide a matter on grounds which the applicant was not afforded an opportunity to address.

[3] The delay from November 15, 2001 to May 29, 2002, in applying for judicial review was not insignificant, however, it has been satisfactorily explained by the impecuniosity of the applicant.

[4] The order of the Ontario Labour Relations Board dated November 15, 2001, is set aside and the application to the board is remitted to it for further consideration.

[5] **Lane, J.:** The applicant will have costs fixed at \$3,000. The application record has been endorsed as follows: "The application is allowed for reasons delivered by Mr. Justice Cameron. The order of the Ontario Labour Relations Board of November 15th, 2001 is set aside and the application is remitted to the Ontario Labour Relations Board for further consideration. Costs to the applicant fixed at \$3,000."

Application allowed.

Editor: Angela E. McKay/gs