

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260807

Docket: A-250-25

Citation: 2026 FCA 136

**CORAM: GLEASON J.A.
LOCKE J.A.
BIRINGER J.A.**

BETWEEN:

BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION

Applicant

and

**THE INTERNATIONAL LONGSHORE & WAREHOUSE
UNION-CANADA**

Respondent

Heard at Vancouver, British Columbia, on April 14, 2026.

Judgment delivered at Ottawa, Ontario, on August 7, 2026.

REASONS FOR JUDGMENT BY:

GLEASON J.A.

CONCURRED IN BY:

**LOCKE J.A.
BIRINGER J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260807

Docket: A-250-25

Citation: 2026 FCA 136

CORAM: GLEASON J.A.
LOCKE J.A.
BIRINGER J.A.

BETWEEN:

BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION

Applicant

and

THE INTERNATIONAL LONGSHORE & WAREHOUSE
UNION-CANADA

Respondent

REASONS FOR JUDGMENT

GLEASON J.A.

[1] In this application for judicial review, the applicant, British Columbia Maritime Employers Association (the BCMEA), seeks to set aside the decision of the Canada Industrial Relations Board (the CIRB or the Board) in *International Longshore and Warehouse Union-Canada and British Columbia Maritime Employers Association*, 2025 CIRB 1190 [*ILWU and BCMEA CIRB 2025*]. There, the CIRB determined that no collective agreement was in force

between the BCMEA and the International Longshore & Warehouse Union-Canada (the ILWU) when members of the ILWU engaged in an illegal strike on July 18 and 19, 2023. The BCMEA contends that this determination was unreasonable and asks this Court to find that the only reasonable conclusion open to the Board was the opposite one. For the reasons that follow, I disagree and would accordingly dismiss this application for judicial review.

[2] To put the Board's decision in *ILWU and BCMEA CIRB 2025* into context, some background is necessary.

[3] The BCMEA is the non-accredited bargaining agent for employers involved in national and international marine transportation in British Columbia. The ILWU is the bargaining agent for longshore employees who work in the ports on the Canadian west coast. The BCMEA and the ILWU were parties to a collective agreement that expired on March 31, 2023. The BCMEA provided the ILWU notice to bargain for the renewal of the collective agreement on November 30, 2022, but the parties were unable to negotiate a renewal agreement. The ILWU acquired the right to legally strike following the expiration of the statutory cooling-off period, and its members engaged in a legal strike from July 1 to July 13, 2023.

[4] The collective agreement between the parties contained a provision prohibiting strikes. It did not contain a bridging clause, but rather, provided for its expiry on March 31, 2023 if notice to bargain were given. As notice was given, the collective agreement expired on March 31, 2023. The expiry provision in the parties' collective agreement provided:

This Agreement shall be effective from April 1, 2018 and shall remain in force and effect until March 31, 2023, and from year to year thereafter unless either Party gives notice in writing to the other Party not less than four months prior to March 31, 2023, or December 31 in any subsequent year, to terminate or to renew this Agreement or to negotiate a renewal thereof.

[5] By virtue of paragraph 50(b) and subsections 67(4) to 67(6) of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the *Code*), the parties' collective agreement continued in force during the statutory freeze period provided by those provisions. This application for judicial review turns on the meaning the Board gave to paragraph 50(b) and subsections 67(4) to 67(6) of the *Code*. They provide as follows:

Duty to bargain and not to change terms and conditions

50 Where notice to bargain collectively has been given under this Part,

...

(b) the employer shall not alter the rates of pay or any other term or condition of employment or any right or privilege of the employees in the bargaining unit, or any right or privilege of the bargaining agent, until the requirements of paragraphs 89(1)(a) to (d) have been met, unless the bargaining agent consents to the alteration of such a term or condition, or such a right or privilege.

...

Obligation de négocier et de ne pas modifier les modalités

50 Une fois l'avis de négociation collective donné aux termes de la présente partie, les règles suivantes s'appliquent :

[...]

b) tant que les conditions des alinéas 89(1)a) à d) n'ont pas été remplies, l'employeur ne peut modifier ni les taux des salaires ni les autres conditions d'emploi, ni les droits ou avantages des employés de l'unité de négociation ou de l'agent négociateur, sans le consentement de ce dernier.

[...]

Provision for settlement of differences to remain in force

67(4) Notwithstanding anything contained in a collective agreement, the provision required to be contained therein by subsection 57(1) shall remain in force after the termination of the collective agreement and until the requirements of paragraphs 89(1)(a) to (d) have been met.

Power of arbitrator where agreement terminates

67(5) Where a difference between the parties to a collective agreement relating to a provision contained in the collective agreement arises during the period from the date of its termination to the date the requirements of paragraphs 89(1)(a) to (d) have been met,

(a) an arbitrator or arbitration board may hear and determine the difference; and

(b) sections 57 to 66 apply to the hearing and determination.

Powers of arbitrator when conditions of paragraphs 89(1)(a) to (d) have been met

67(6) Where a disagreement concerning the dismissal or discipline of an employee in the bargaining unit arises during the period that begins on the date on which the requirements of paragraphs 89(1)(a) to (d) are met and ends on the date on which a new or revised collective agreement is entered into, the bargaining agent may submit the disagreement for final settlement in

Règlement des désaccords

67(4) Malgré toute disposition contraire de la convention collective, la clause obligatoire visée au paragraphe 57(1) demeure en vigueur après l'expiration de la convention tant que n'ont pas été remplies les conditions énoncées aux alinéas 89(1)a) à d).

Pouvoirs de l'arbitre à l'expiration de la convention

67(5) Les cas de désaccords portant sur une disposition de la convention collective et survenant dans l'intervalle qui sépare l'expiration de celle-ci et l'accomplissement des conditions énoncées aux alinéas 89(1)a) à d) :

a) peuvent être soumis à un arbitre ou un conseil d'arbitrage;

b) sont assujettis, pour leur règlement, aux articles 57 à 66.

Pouvoirs de l'arbitre lorsque les conditions énoncées aux alinéas 89(1)a) à d) ont été remplies

67(6) Lorsque survient un litige concernant le congédiement d'un employé de l'unité de négociation — ou la prise de mesures disciplinaires à son égard — au cours de la période qui commence à la date à laquelle les conditions énoncées aux alinéas 89(1)a) à d) sont remplies et se termine le jour de la conclusion d'une nouvelle convention collective ou d'une convention collective révisée,

accordance with the provisions for the settlement of differences contained in the previous collective agreement. The relevant provisions in the collective agreement and sections 57 to 66 apply, with such modifications as the circumstances require, to the settlement of the disagreement.

l'agent négociateur peut soumettre le litige pour règlement définitif en conformité avec les dispositions de la convention collective antérieure qui porte sur le règlement des désaccords. Les dispositions pertinentes de la convention collective et les articles 57 à 66 s'appliquent au règlement du litige, avec les modifications nécessaires.

[6] Subsection 57(1) of the *Code* requires that every collective agreement contain a provision providing for mandatory arbitration of all differences concerning the interpretation, application, administration or alleged contravention of a collective agreement.

[7] Subsection 89(1) of the *Code* sets out the pre-conditions for acquiring the right to engage in a legal strike or lockout. It reads as follows:

No strike or lockout until certain requirements met

89(1) No employer shall declare or cause a lockout and no trade union shall declare or authorize a strike unless

(a) the employer or trade union has given notice to bargain collectively under this Part;

(b) the employer and the trade union

(i) have failed to bargain collectively within the period specified in paragraph 50(a), or

Conditions relatives aux grèves et lock-out

89(1) Il est interdit à l'employeur de déclarer ou de provoquer un lock-out et au syndicat de déclarer ou d'autoriser une grève si les conditions suivantes ne sont pas remplies :

a) l'un ou l'autre a adressé un avis de négociation collective en application de la présente partie;

b) les deux :

(i) soit n'ont pas négocié collectivement dans le délai spécifié à l'alinéa 50a),

(ii) have bargained collectively in accordance with section 50 but have failed to enter into or revise a collective agreement;

(ii) soit ont négocié collectivement conformément à l'article 50, sans parvenir à conclure ou réviser la convention collective;

(c) the Minister has

c) le ministre a :

(i) received a notice, given under section 71 by either party to the dispute, informing the Minister of the failure of the parties to enter into or revise a collective agreement, or

(i) soit reçu l'avis mentionné à l'article 71 et l'informant que les parties n'ont pas réussi à conclure ou à réviser la convention collective,

(ii) taken action under subsection 72(2);

(ii) soit pris l'une des mesures prévues par le paragraphe 72(2);

(d) twenty-one days have elapsed after the date on which the Minister

d) vingt et un jours se sont écoulés depuis la date à laquelle le ministre, selon le cas :

(i) notified the parties of the intention not to appoint a conciliation officer or conciliation commissioner, or to establish a conciliation board under subsection 72(1),

(i) a notifié aux termes du paragraphe 72(1) son intention de ne pas nommer de conciliateur ou de commissaire-conciliateur, ni de constituer de commission de conciliation,

(ii) notified the parties that a conciliation officer appointed under subsection 72(1) has reported,

(ii) a notifié aux parties le fait que le conciliateur nommé aux termes du paragraphe 72(1) lui a fait rapport des résultats de son intervention,

(iii) released a copy of the report to the parties to the dispute pursuant to paragraph 77(a), or

(iii) a mis à la disposition des parties, conformément à l'alinéa 77a), une copie du rapport qui lui a été remis,

(iv) is deemed to have been reported to pursuant to subsection 75(2) or to have received the report pursuant to

(iv) est réputé avoir été informé par le conciliateur des résultats de son intervention, en application du paragraphe 75(2), ou avoir reçu le rapport,

subsection 75(3);

en application du paragraphe
75(3);

(e) the Board has determined any referral made pursuant to subsection 87.4(5); and

e) le Conseil a statué sur un renvoi fait en vertu du paragraphe 87.4(5);

(f) sections 87.2 and 87.3 have been complied with.

f) les conditions prévues aux articles 87.2 et 87.3 ont été remplies.

[8] During the legal strike of the ILWU members in the present case, at the urging of the federal Minister of Labour, the parties agreed to recommend terms of settlement proposed by a federal mediator to their principals for acceptance, and the ILWU members returned to work on July 13, 2023, while the proposal was being considered. When an internal ILWU committee turned down the settlement proposal, ILWU members recommenced their strike on July 18, 2023. However, the ILWU did not provide a fresh 72-hour strike notice. In *British Columbia Maritime Employers Association v. International Longshore and Warehouse Union-Canada*, 2023 CIRB 1088 [*ILWU and BCMEA CIRB 2023*], the CIRB found that the resumption of the strike was illegal because a fresh strike notice was required in the circumstances under section 87.2 and paragraph 89(1)(f) of the *Code*. This Court upheld that decision in *International Longshore and Warehouse Union-Canada v. British Columbia Maritime Employers Association*, 2024 FCA 142 [*ILWU and BCMEA FCA*].

[9] In *ILWU and BCMEA FCA*, this Court determined it would decide the judicial review application taken from the Board's decision in *ILWU and BCMEA CIRB 2023*, even though it was moot, because the outcome could affect an outstanding grievance the BCMEA had

commenced seeking damages for the illegal strike or a civil action BCMEA stated it intended to commence in the event its grievance were found to be inarbitrable.

[10] The BCMEA's grievance seeking damages for the illegal strike was referred to a labour arbitrator, and in the context of that arbitration, the ILWU requested that the arbitrator refer to the CIRB the question of whether or not a collective agreement was in force on July 18 and 19, 2023, when the illegal strike occurred. The authority of a labour arbitrator to refer a question of this nature to the CIRB for determination is contained in subsection 65(1) of the *Code*, which provides:

Questions may be referred to Board Renvoi au Conseil

65(1) Where any question arises in connection with a matter that has been referred to an arbitrator or arbitration board, relating to the existence of a collective agreement or the identification of the parties or employees bound by a collective agreement, the arbitrator or arbitration board, the Minister or any alleged party may refer the question to the Board for determination.

65(1) Toute question soulevée dans une affaire d'arbitrage et se rapportant à l'existence d'une convention collective ou à l'identité des parties ou des employés qu'elle lie peut être renvoyée au Conseil, pour décision, par l'arbitre, le conseil d'arbitrage, le ministre ou toute prétendue partie.

[11] The labour arbitrator referred the question to the CIRB, and as noted, in *ILWU and BCMEA CIRB 2025* the Board determined that no collective agreement was in force during the illegal strike that occurred on July 18 and 19, 2023.

[12] The Board reasoned that this conclusion was mandated by the wording of paragraph 50(b) and subsections 67(4) to 67(6) of the *Code*. The CIRB also held that its prior

decisions in *Yellowknife Firefighters, Local 2890 of the International Association of Fire Fighters v. City of Yellowknife*, 2012 CIRB 661 [*City of Yellowknife*] at para. 56; *Communications. Energy and Paperworkers Union of Canada v. Intek Communications Inc.*, 2013 CIRB 683 [*Intek*] at para. 363; and *Canadian Union of Postal Workers v. Canada Post Corporation*, 2012 CIRB 627 [*Canada Post*] at para. 49 all reached the same conclusion and held that, in the absence of a bridging clause, no collective agreement is in force after the requirements of paragraphs 89(1)(a) to (d) of the *Code* have been met.

[13] The Board further disagreed with the BCMEA that the decision of the Supreme Court of Canada in *Caimaw v. Paccar of Canada Ltd.*, 1989 CanLII 49 (SCC), [1989] 2 S.C.R. 983 [*Paccar*] would mandate a different result because the comments of Justice La Forest at page 1009 that “[i]t is only sensible that the terms and conditions formerly contained in a collective agreement be presumed to continue to govern the relationship, absent circumstances that would imply otherwise” do not mean that a collective agreement is preserved or remains in effect after the end of the statutory freeze. Rather, according to the Board, these comments are to be understood as referring to the “employer-employee relationship in the context where an employer offers work and the employees accept to work under the employer’s offer, when the collective agreement is no longer in force and effect” (at para. 89).

[14] It is well-settled that the applicable standard of review this Court is to apply to the review of CIRB decisions is reasonableness: *ILWU and BCMEA FCA* at para. 77; *Watson v. Canadian Union of Public Employees*, 2023 FCA 48 at para. 16. Therefore, this Court may set aside the

CIRB's decision in the present case only if it is unreasonable: *Heatley v. International Association of Machinists and Aerospace Workers, District Lodge 14*, 2025 FCA 188 at para. 3.

[15] I see nothing unreasonable in the CIRB's decision. The Board provided thorough and intelligible reasons for its decision. Moreover, the conclusion it reached is supported by a reasonable interpretation of the applicable provisions in the *Code* and by the relevant case law.

[16] More specifically, it is reasonable to conclude that the combined effect of paragraph 50(b) and subsections 67(4) to (6) of the *Code* is to maintain the provisions of an expired collective agreement in force (other than those that allow for arbitration of dismissal or discharge grievances), once the collective agreement expires, only until the requirements of paragraphs 89(1)(a) to (d) of the *Code* are met. Thereafter, subsection 67(6) of the *Code* provides for the arbitration only of dismissal and discharge grievances but not for grievances like the one filed by the BCMEA in this case. The requirements for a strike notice, strike vote, or to settle maintenance of activities issues before a legal strike may occur are set out in paragraphs 89(1)(e) and (f) of the *Code* and not in paragraphs 89(1)(a) to (d).

[17] In the present case, the requirements of paragraphs 89(1)(a) to (d) had been met when the illegal strike occurred and the collective agreement had expired. The strike was found to have been illegal only because the ILWU did not provide a second strike notice the CIRB found it was required to provide. In the circumstances, it was reasonable for the CIRB to find that the combined effect of the relevant provisions in the *Code* meant that there was no collective agreement in force when the illegal strike occurred.

[18] This finding also accords with the CIRB's previous decisions in *City of Yellowknife*, *Intek*, and *Canada Post*, upon which the CIRB relied. Contrary to what the BCMEA submits, I do not see that the decision of the Supreme Court of Canada in *Paccar* mandates a different result because the issues in that case were different and it arose under different legislation, as the CIRB noted.

[19] In *Paccar*, the Supreme Court was concerned with whether an employer could unilaterally alter terms and conditions of employment following the termination of a collective agreement under a legislative scheme that did not contain a statutory freeze. The Court was not required to determine whether a collective agreement remained in force following the expiry of a statutory freeze period. Nor do Justice La Forest's comments, that the terms and conditions formerly contained in a collective agreement may be presumed to continue governing the employment relationship, imply that the collective agreement itself continues in force indefinitely. As the CIRB reasonably observed, those comments addressed the continuing employment relationship after the collective agreement had ceased to operate and were expressly made subject to the requirements of the governing statutory scheme. Here, the *Code* provides a specific answer to the question before the CIRB by limiting the continuation of the terms of an expired collective agreement to the period prescribed by paragraph 50(b) and the circumstances detailed in subsection 67(6). The CIRB was therefore entitled to conclude that *Paccar* did not undermine its interpretation of the *Code* or its conclusion that no collective agreement was in force when the illegal strike occurred.

[20] Similarly, contrary to what the BCMEA asserts, I see nothing in the return-to-work Order the Board issued in *ILWU and BCMEA CIRB 2023* that could be interpreted as a finding that the collective agreement remained in force during the illegal strike. Rather, the Board merely directed that employees would be required to work under the terms and conditions in the collective agreement, a conclusion similar to that reached in *Paccar*. This is different from a finding that the collective agreement remained in force for purposes other than accessing arbitration to settle dismissal or discipline grievances after the requirements of paragraphs 89(1)(a) to (d) of the *Code* had been met.

[21] Indeed, the reasons of this Court in *ILWU and BCMEA FCA* at paragraph 64 contemplate that the BCMEA's grievance, seeking damages for the illegal strike, might well be inarbitrable as no collective agreement was in force when the illegal strike occurred.

[22] Perhaps more importantly, the standard of reasonableness leaves no room for this Court to intervene merely because the BCMEA advances a different interpretation of the *Code*, even if it might also be tenable. As the Supreme Court explained in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov], reasonableness review is concerned with whether the decision-maker's interpretation falls within a range of acceptable outcomes and is justified in light of the relevant legal and factual constraints, not with whether a reviewing court would have reached the same conclusion: *Vavilov* at paras. 83–85, 99, 125. More recently, the Supreme Court reiterated in *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 [Mason] that a reviewing court is not to undertake a *de novo* analysis of the statutory scheme or determine for itself the “correct” interpretation of the legislation. Rather, the task is to assess the

reasonableness of the interpretation actually adopted by the decision-maker: *Mason* at paras. 68–70. Thus, even if the BCMEA’s proposed interpretation of the interaction between sections 50, 67 and 89 of the *Code* were a possible one, that would not justify setting aside the CIRB’s decision so long as the interpretation adopted by the Board is itself reasonable.

[23] Indeed, in the earlier proceedings between these same parties, the BCMEA successfully relied on these very principles to defend the CIRB’s interpretation of section 87.2 of the *Code*. In *ILWU and BCMEA FCA*, this Court emphasized that the question was not whether the Court would have interpreted the strike notice provisions in the same manner as the Board, but rather whether the Board’s interpretation was reasonable. The Court accordingly upheld the CIRB’s determination that a new 72-hour notice was required before strike activity could recommence. The same deferential approach governs here. The issue before us is not whether we would have reached the same conclusion as the Board regarding the continued force of the expired collective agreement, but rather whether the conclusion the Board reached is one that can reasonably be drawn from the text, context, and purpose of the relevant provisions of the *Code*.

[24] Given the statutory scheme, the Board’s expertise in the administration of the *Code*, and the authorities upon which it relied, the CIRB’s interpretation easily meets that standard. This is not a case where the Board ignored a binding authority, failed to grapple with a central argument, or adopted an interpretation that is incompatible with the governing legislation. Rather, the Board carefully considered the competing submissions, explained why it preferred one interpretation over the other, and reached a conclusion that is rational and internally coherent and that is available under the statutory scheme. In such circumstances, *Vavilov* teaches that a

reviewing court must refrain from substituting its own view of the preferable outcome for that of the decision-maker: *Vavilov* at paras. 12–13, 83, 125. The shoe is therefore on the other foot in this proceeding than in *ILWU and BCMEA FCA*. Just as the BCMEA successfully argued in *ILWU and BCMEA FCA* that deference was owed to the CIRB’s reasonable interpretation of the *Code*, deference must also be afforded to the Board’s reasonable interpretation in the present case.

[25] Thus, I would dismiss this application. The parties have agreed on the issue of costs and have advised the Court that no order is required to address costs. I would accordingly make no order as to costs.

“Mary J.L. Gleason”

J.A.

“I agree.

George R. Locke J.A.”

“I agree.

Monica Biringer J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-250-25
STYLE OF CAUSE:	BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION v. THE INTERNATIONAL LONGSHORE & WAREHOUSE, UNION-CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	APRIL 14, 2026
REASONS FOR JUDGMENT BY:	GLEASON J.A.
CONCURRED IN BY:	LOCKE J.A. BIRINGER J.A.
DATED:	AUGUST 7, 2026

APPEARANCES:

Ryan Copeland
Talia Behrmann

FOR THE APPLICANT

Craig D Bavis
Rebecca Kantweg

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Roper Greyell LLP
Vancouver, British Columbia

FOR THE APPLICANT

Victory Square Law Office LLP
Whitehorse, Yukon

FOR THE RESPONDENT