

LABOUR RELATIONS

Judicial review of Canada Industrial Relations Board (Board) decision granting application for certification of respondent under *Canada Labour Code*, R.S.C., 1985, c. L-2 (Code), s. 24 — Applicant telecommunications network infrastructure service provider headquartered in Montréal — Respondent filing application with Board to represent all technical field, warehouse employees working for applicant in British Columbia — Applicant opposing certification on ground labour relations at issue subject to provincial regulation rather than federal regulation under Code, Board therefore not having jurisdiction to entertain application — Board finding having constitutional authority to deal with matter — Applying functional approach set out in *Northern Telecom Ltd. v. Communications Workers of Canada*, [1980] 1 S.C.R. 115 — Holding that daily operations, normal activities of applicant going well beyond those of local work or undertaking — Noting that types of operations expressly enumerated in Code, s. 2 subject to federal jurisdiction — Applicant claiming direct federal jurisdiction excluded because not itself operating a telecommunications network, that derivative federal jurisdiction not triggered by its operations — Whether Board correct in holding having required constitutional jurisdiction to consider application for certification — Federal presence remaining in regulation of labour relations — Parliament able to regulate labour relations when jurisdiction over works integral part of its competence under federal head of power — Parliament thus only having jurisdiction over labour relations by way of exceptions, as reflected in definition of “federal work, undertaking or business” in Code, s. 2 — Supreme Court recognizing federal jurisdiction where: (1) employment relates to work, undertaking, or business within legislative authority of Parliament (i.e. direct jurisdiction) or (2) when it is an integral part of a federally regulated undertaking (derivative jurisdiction) — In both cases, Court having to assess work’s essential operational nature to decide which level of government having authority — Operation should not be characterized as federal or provincial on account of casual factors — Regarding derivative jurisdiction, focus of functional analysis on relationship between activity, particular employees under scrutiny, federal operation said to benefit from work of those employees — Operation could be subject to derivative federal labour jurisdiction even if carrying on provincially-related activities — Here, no dispute that applicant not itself federal undertaking, not operating telecommunications network — Question to be resolved whether applicant’s essential, ongoing operations vital, essential or integral to federal undertaking or integral element of federal jurisdiction over telecommunications — Clear from record that applicant’s activities going beyond mere construction of network — Applicant’s involvement with telecommunications networks appearing to be predominant part of its work, this neither exceptional nor casual factor — Board relying on applicant’s own evidence, admissions — Facts supporting presumption of provincial jurisdiction over labour relations not established herein — Board correctly distinguishing present case from that of *Construction Montcalm Inc. v. Minimum Wage Commission*, [1979] 1 S.C.R. 754 — Record seeming to indicate that activities at issue integral to telecommunications networks, thus justifying imposing exceptional federal jurisdiction for labour relations purposes — Mere fact that Board, other administrative decision makers coming to different conclusions in other factual contexts in no way demonstrating that Board’s determination in present case erroneous — Other decisions bearing more factual similarities to case at bar following reasoning similar to that of Board — Application dismissed.

TELECON INC. V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 213 (A-88-18, 2019 FCA 244, de Montigny J.A., reasons for judgment dated October 2, 2019, 21 pp.)

