

Federal Court of Appeal Upholds WestJet Employee Termination Over Vaccine Policy

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A recent Federal Court of Appeal decision, *Henrikson v. WestJet*, 2026 FCA 39, has confirmed that WestJet acted lawfully in terminating an employee who refused to comply with its COVID-19 vaccination policy.

The case stems from federal measures introduced in 2021 requiring vaccination policies for workers in federally regulated transportation sectors, including aviation. The federal measure, the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19*, No. 43 (2021) C Gaz I, 5314, required employees in the airline sector to be fully vaccinated before attending an aerodrome property. In response, WestJet implemented a policy mandating that employees be fully vaccinated by October 30, 2021, particularly for those required to access airport properties.

Bjarni Henrikson, an aircraft maintenance engineer employed by WestJet, did not comply with the policy and was dismissed in December 2021. He subsequently filed an unjust dismissal complaint, which was rejected by the Canada Industrial Relations Board. The Board found that WestJet's policy was reasonable, clearly communicated, and fairly applied, and that termination was justified given the circumstances.

Henrikson sought judicial review of the Board's decision, arguing that the decision was unreasonable, procedurally unfair, and influenced by bias. He also challenged the constitutionality of the federal vaccination requirement. However, the Federal Court of Appeal, which heard the judicial review, found no errors in the Board's reasoning, affirming that the vaccination policy was a legitimate workplace safety measure regardless of the broader constitutional question.

The Court noted that sitting in judicial review, a court may set aside a board decision if it is unreasonable: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. It also noted that matters of procedural fairness, including bias, are reviewed on a standard akin to correctness, per *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para. 54; *Girouard v. Canada (Attorney General)*, 2020 FCA 129 at para. 38, and that the court must be satisfied the process followed was fair and just having regard to all the circumstances: *Adegoke v. Canada (Attorney General)*, 2025 FCA 229 at para. 9. The Court emphasized that it could not reweigh evidence or substitute its own findings for those of the Board.

The Court concluded that the Board's decision was coherent, justified, and consistent with established legal principles on workplace policies and discipline.

On procedural fairness, the Court rejected claims of bias, noting that the Board acted within its authority in managing the hearing and evidence. The Court also found no indication that the employee's role could reasonably be performed remotely, reinforcing the importance of vaccination for on-site safety.

Ultimately, the Court dismissed the application for judicial review, affirming the ability of employers to enforce reasonable health and safety policies in regulated sectors during the pandemic. A PDF version is available for download [here](#).

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

Author



Rui M. Fernandes

Partner and Co-Chair, Transportation and Logistics Group

416.203.9505

rfernandes@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com