

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Alan R. Philp
Mr. Justice Guy J. Kroft
Mr. Justice Michel A. Monnin

B E T W E E N:

<i>CANADIAN NATIONAL RAILWAY COMPANY</i>)	<i>B. R. Benson</i>
)	<i>In Person</i>
)	
<i>(Applicant) Respondent</i>)	<i>D. P. Ryall</i>
)	<i>for the Respondent</i>
)	
<i>- and -</i>)	
)	<i>Appeal heard:</i>
)	<i>January 19, 2005</i>
<i>BRYAN R. BENSON</i>)	
)	<i>Judgment delivered:</i>
<i>(Respondent) Appellant</i>)	<i>January 21, 2005</i>

PHILP J.A.

1 Mr. Benson, a *pro se* litigant, has appealed against the order of the motions judge striking his claim against the Canadian National Railway Company (the CNR) and against the further order that he shall not institute a further proceeding except with leave of a judge. Mr. Benson presented his argument in an orderly manner and with considerable articulation. However, I have not been persuaded that the motions judge exercised his discretion on a misunderstanding of the facts or the legal principles.

2 The motions judge found that the complaints raised in Mr. Benson's statement of claim had been dealt with in a previous action that had been struck out without leave to file an amended statement of claim. He

concluded that the “second action is an abuse of process and must be struck out” (at para. 37). That conclusion is amply supported on the record.

3 The motions judge found as well that Mr. Benson’s conduct was persistent and vexatious, the two requirements of the vexatious proceedings provisions of ss. 73-75 of *The Court of Queen’s Bench Act, C.C.S.M.*, c. C280. I am in substantial agreement with the reasons of the motions judge in making that finding, and I am satisfied that his conclusion that the CNR is entitled to an order under s. 73(1) is properly supported on the record.

4 The appeal is dismissed with costs.

_____ J.A.

I agree: _____ J.A.

I agree: _____ J.A.