

Federal Court



Cour fédérale

Date: 20160610

Docket: T-87-16

Citation: 2016 FC 649

Ottawa, Ontario, June 10, 2016

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

RICHARD TUDOR PRICE

Plaintiff

and

ATTORNEY GENERAL OF CANADA

Defendant

ORDER AND REASONS

I. Introduction

[1] The Attorney General of Canada [Attorney General] has brought a motion pursuant to Rule 221 of the *Federal Courts Rules*, SOR/98-106 [the Rules] to strike the statement of claim filed by Richard Tudor Price without leave to amend. The Attorney General says that this Court is without jurisdiction to adjudicate Mr. Tudor Price's claims, and the statement of claim is frivolous or vexatious, or is otherwise an abuse of process.

[2] For the reasons that follow, I have concluded that the grievance procedure found in the *Public Service Labour Relations Act*, SC 2003, c 22, s 2 [PSLRA] provides the only forum in which Mr. Tudor Price may seek relief for the mistreatment he allegedly suffered at the hands of his supervisors and employer. It is therefore appropriate to strike the statement of claim in its entirety without leave to amend (*Bron v Canada (Attorney General)*, 2010 ONCA 71 [*Bron*]).

II. Background

[1] Mr. Tudor Price is a former federal public servant. He began working at Agriculture and Agri-Food Canada [AAFC] in 1982 and was employed in various executive positions throughout his career. He seeks damages and costs arising from his alleged mistreatment by senior managers at AAFC.

[2] In July 2010, Mr. Tudor Price was informed that his performance rating for the 2009-2010 review period was “succeeded minus”. Performance ratings determine the amounts payable to employees as performance awards. For employees nearing retirement, a performance rating may also affect the amount of their pensions.

[3] Mr. Tudor Price complained about his performance rating to the Acting Director General for Executive Group Services, Human Resources Branch, and eventually to the Assistant Deputy Minister [ADM], Human Resources. Mr. Tudor Price alleged that in November 2010, he and the ADM, Human Resources verbally agreed that his 2009-2010 performance rating would be changed to “succeeded”; that he would receive the same performance rating for 2010-2011 if he

received positive performance reviews; and, in return, he would resign from the public service by June 30, 2011. The ADM, Human Resources denied agreeing to these terms.

[4] Mr. Tudor Price retired from AAFC at the end of June 2011. On August 2, 2011, he was informed that his performance rating for his final year of employment was “succeeded minus”. This resulted in performance pay that was \$4,760 less than the amount he would have received with a rating of “succeeded”, and it also affected his pension.

[5] On August 5, 2011, Mr. Tudor Price filed a formal grievance in which he requested that his performance rating be changed to “succeeded”.

[6] In November 2011, a group of AAFC officials met to discuss Mr. Tudor Price’s grievance. They prepared a document titled “Grievor Performance Explanation”, which was provided to the ADM, Human Resources on December 14, 2011. The document was not provided to Mr. Tudor Price prior to the hearing of his grievance.

[7] On February 24, 2012, the ADM, Human Resources Branch denied Mr. Tudor Price’s grievance in a “Final Level Grievance Decision”.

[8] Mr. Tudor Price subsequently referred his grievance to the Public Service Labour Relations Board [the Board]. In May 2013, the Board found that his grievance was not eligible for adjudication under the PSLRA (*Tudor Price v Deputy Head (Department of Agriculture and Agri-Food)*, 2013 PSLRB 57). The Board denied Mr. Tudor Price’s grievance and rejected the allegations that his treatment by AAFC officials amounted to bad faith or disguised discipline:

[48] I find that the grievor's bad faith argument is based on a series of assumptions he made, none of which were established by any compelling evidence, and that it clearly lacks the necessary credence to bring his grievance within the scope of section 209 of the *Act*.

[...]

[52] What transpired in this case was not the work of senior managers motivated by bad faith or a desire to punish or discipline an employee for reasons unrelated to his performance. Rather, it was the collective effort of a Committee specifically mandated to review and approve the performance assessments of a group of executives and to ultimately assign appropriate performance ratings to each of them, subject to the deputy minister's approval.

[9] Mr. Tudor Price sought judicial review of the Board's decision. On March 31, 2014, Justice Gleason agreed that the Board lacked jurisdiction over Mr. Tudor Price's claim and dismissed his application for judicial review.

[10] In light of the Court's ruling, Mr. Tudor Price sought judicial review of the "Final Level Grievance Decision" of the ADM, Human Resources. On June 1, 2015, Justice Heneghan allowed the application on grounds of procedural fairness. She found that the AAFC decision-maker had improperly relied on documents and materials that were not disclosed to Mr. Tudor Price (*Price v Canada (Attorney General)*, 2015 FC 696).

[11] On February 12, 2016, Mr. Tudor Price was informed that the redetermination of his grievance had resulted in a favourable decision. His performance rating for the 2010-2011 review period was changed to "succeeded", and his pay and pension benefits were adjusted accordingly.

[12] Despite his apparent success, on March 7, 2016, Mr. Tudor Price filed an application for judicial review of the decision to allow his grievance. Mr. Tudor Price says that the final level decision-maker: failed to deal with his allegations of bad faith and damage to his reputation; failed to consider the allegation that his resignation was invalid because it was induced by deceit; unreasonably refused to allow an amendment of the grievance to include additional allegations; provided inadequate reasons; and failed to consider remedies such as damages for injury to reputation and reinstatement. Mr. Tudor Price has asked this Court to return the matter to AAFC for a full *de novo* hearing that addresses all of his allegations and proposed remedies. He has also requested that his application for judicial review be converted into an action so that he may seek damages from this Court for abuse of authority, misfeasance in public office, and other torts allegedly committed by AAFC officials. The application for judicial review is currently pending before this Court (Court File No. T-400-16).

[13] On January 15, 2016, Mr. Tudor Price filed the statement of claim in the present action, in which he alleges that the “actions of AAFC officials in processing his grievance in 2011 constitute misfeasance in public office”.

[14] On February 12, 2016, the Attorney General moved to strike Mr. Tudor Price’s statement of claim under Rule 221(a), (c) and (f), pursuant to which the Court may, at any time, order that a pleading be struck on the ground that it: (a) discloses no reasonable cause of action; (c) is scandalous, frivolous or vexatious; or (f) is otherwise an abuse of the Court’s process.

III. Issues

[15] The Attorney General's motion to strike Mr. Tudor Price's statement of claim raises two issues.

- A. Should the statement of claim be struck for want of jurisdiction?
- B. Should the statement of claim be struck because it is frivolous or vexatious, or otherwise an abuse of the Court's process?

IV. Analysis

[16] A motion to strike under Rule 221 will succeed only if it is plain and obvious that the claim discloses no reasonable cause of action (*Hunt v Carey Can Inc.*, [1990] 2 SCR 959, [1990] 1 WDCP (2d) 523 (SCC)). In cases where matters are not fully settled by the jurisprudence, the Court should hesitate to strike a motion for want of jurisdiction because complex questions of statutory interpretation are better left for argument at trial (*Committee for Monetary and Economic Reform ("COMER") v R*, 2016 FC 147 at para 68).

- A. *Should the statement of claim be struck for want of jurisdiction?*

[17] The Attorney General says that the allegations contained in Mr. Tudor Price's statement of claim are wholly related to his employment, and may therefore be pursued only by way of grievance in accordance with the PSLRA. Mr. Tudor Price responds that he was no longer an employee of AAFC at the time of the alleged misfeasance, and the PSLRA does not therefore

oust this Court's jurisdiction. He also maintains that allegations of malice and corruption are beyond the scope of the grievance process.

[18] Employment-related disputes may be grieved in accordance with s 208(1) of the PSLRA, which provides as follows:

<p>208. (1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved</p> <p>(a) by the interpretation or application, in respect of the employee, of</p> <p style="padding-left: 20px;">(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, [...]</p> <p>(b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.</p>	<p>208 (1) Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé :</p> <p>a) par l'interprétation ou l'application à son égard :</p> <p style="padding-left: 20px;">(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi, [...]</p> <p>b) par suite de tout fait portant atteinte à ses conditions d'emploi.</p>
---	---

[19] The Attorney General says that Mr. Tudor Price's complaints fall under both ss 208(1)(a)(i) and (b) of the PSLRA, because they concern the application of the employer's performance review policies and the grievance process. They are also matters affecting Mr. Tudor Price's terms and conditions of employment.

[20] Citing *Bron* at paragraph 33, the Attorney General submits that s 236 of the PSLRA “explicitly ousts” this Court’s jurisdiction over claims that may be the subject of a grievance under s 208 of the PSLRA. Section 236 of the PSLRA provides as follows:

236. (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.

(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.[...]

236 (1) Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d’emploi remplace ses droits d’action en justice relativement aux faits — actions ou omissions — à l’origine du différend.

(2) Le paragraphe (1) s’applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu’il soit possible ou non de soumettre le grief à l’arbitrage. [...]

[21] Subsection 206(2) of the PSLRA addresses a former employee’s right to grieve, and provides as follows:

206. (2) Every reference in this Part to an “employee” includes a former employee for the purposes of any provisions of this Part respecting grievances with respect to

(a) any disciplinary action resulting in suspension, or any termination of employment, under paragraph 12(1)(c), (d) or (e) of the *Financial*

(2) Les dispositions de la présente partie relatives aux griefs s’appliquent par ailleurs aux anciens fonctionnaires en ce qui concerne :

a) les mesures disciplinaires portant suspension, ou les licenciements, visés aux alinéas 12(1)c), d) ou e) de la *Loi sur la gestion des finances publiques*; [...]

Administration Act. [...]

[22] Mr. Tudor Price says that he is not concerned with a “disciplinary action resulting in suspension, or any termination of employment”. He submits that the grievance process is not available to him because he does not fall within the PSLRA’s definition of “former employee”.

[23] The Attorney General admits that, on its face, the definition of “employee” in s 206(2) appears to limit the rights of former employees to grieve matters related to their suspension or termination. However, the Attorney General describes s 206(2) as an enabling rather than a limiting provision, and says that jurisprudence supports a broad interpretation of a former employee’s right to grieve under s 208 of the PSLRA. The Attorney General submits that the determinative question is not whether an individual was still employed at the time the dispute arose, but rather whether the matter relates to the individual’s employment.

[24] The Federal Court of Appeal has held that s 90(1) of the former *Public Service Staff Relations Act*, the predecessor to s 208(1) of the current PSLRA, must be read so as to include any person who feels “aggrieved as an employee” (*R v Lavoie* (1977), [1978] 1 FC 778 at para 10, [1977] 2 ACWS 81 (Fed CA) [*Lavoie*]). Although *Lavoie* concerned an alleged disciplinary dismissal, this Court has interpreted the decision as preserving the right of former employees to grieve where “the matter giving rise to the grievance arose during the course of the individual’s employment, where the individual was aggrieved as an employee” (*Salie v Canada (Attorney General)*, 2013 FC 122 at para 61 [*Salie*]).

[25] In *Salie*, Justice Mactavish reviewed the leading jurisprudence governing the question of a former employee’s right to grieve, including *Gloin v Canada (Attorney General)* (1977),

[1978] 2 FC 307 (Fed CA) at para 8; *PIPSC v Solicitor General*, [1979] CPSSRB No 6 (Can PSSRB) at para 28; *Hunt v Canada (Treasury Board)*, [1997] CPSSRB No 84 (Can PSSRB) at para 6; and *Glowinski v Canada (Treasury Board)*, 2006 FC 78). Justice Mactavish concluded that the disputes in each of the cases related either to “the rejection of an individual while on probation (in one case, for potentially disciplinary reasons), or related to matters that arose while the individual was still employed in the Public Service”. She observed that “[n]one of the cases involved a dispute that arose long after the individual ceased to be a government employee” (at para 59).

[26] The dispute in *Salie* concerned an employer’s mistaken and duplicative grant of severance pay to an employee, which the employer attempted to recover approximately two years after the employee left the public service. In that context, Justice Mactavish held that the grievance process was not available to Mr. Salie because he had not been “aggrieved as an employee”. She therefore accepted jurisdiction over the matter.

[27] Counsel for the Attorney General, in her role as Officer of the Court, also referred to *Martell v Canada (Attorney General)*, 2016 PECA 8 [*Martell*], a recent decision of the Prince Edward Island Court of Appeal. The case concerned a former employee of the Royal Canadian Mounted Police [RCMP], who brought an action for damages arising from harassment that allegedly occurred while she was employed by the RCMP and also after her resignation. The Attorney General brought a preliminary motion seeking to have the proceeding dismissed. The Court of Appeal agreed with the motions judge that the claims relating to the period of employment covered by a collective agreement should be struck for want of jurisdiction. The Court of Appeal held at paragraph 22:

The motions judge found that the PSLRA and the Collective Agreement constitute a comprehensive and exclusive employment dispute resolution. I agree. An employee cannot escape the provisions of the PSLRA and the Collective Agreement by resigning and suing.

[28] However, the appeal was allowed with respect to the motions judge's order to strike the claims relating to the allegations concerning actions that occurred after the employee's resignation. The Court of Appeal noted at paragraph 37:

Claims of abuse, threats, and harassment which occurred long after the employment relationship ended cannot be considered matters in which the essential character of the dispute is rooted in the appellant's term of employment with the RCMP. To phrase it another way, the claims the appellant raised regarding events that occurred subsequent to resignation are not exclusively the proper subject of collective bargaining, and the PSLRA or Collective Agreement do not provide a remedy for these claims.

[29] In my view, the present case may be distinguished from both *Salie* and *Martell*. The complaints advanced by Mr. Tudor Price in this case are clearly rooted in his employment relationship with AAFC. They relate to matters that arose while he was employed in the public service, including the circumstances that precipitated his retirement from AAFC, his final performance rating, and the manner in which senior AAFC officials processed his grievance. Mr. Tudor Price is therefore "aggrieved as an employee".

[30] It is telling that Mr. Tudor Price in fact availed himself of the grievance process. He alleges at paragraph 36 of his statement of claim that the "actions of AAFC officials *in processing his grievance* in 2011 constitute misfeasance in public office" [emphasis added]. His claim for damages is inextricably connected to the initial grievance, which he filed while he was still an employee of AAFC.

[31] Mr. Tudor Price's bald allegations of bad faith, malice and corruption do not bring his claims outside the scope of the grievance process (see, e.g., *Tipple v Canada (Attorney General)*, 2012 FCA 158).

[32] I am satisfied that the grievance process found in the PSLRA provides the only forum in which Mr. Tudor Price may seek relief for the mistreatment he allegedly suffered at the hands of his supervisors and employer. It is therefore appropriate to strike the statement of claim in its entirety without leave to amend (*Bron*). Whether the AAFC properly adjudicated all of the allegations and remedies advanced by Mr. Tudor Price in his grievance is another matter, and will be addressed in his concurrent application for judicial review (Court File No. T-400-16).

B. *Should the statement of claim be struck because it is frivolous or vexatious, or otherwise an abuse of the Court's process?*

[33] In light of my decision regarding this Court's lack of jurisdiction over the subject-matter of Mr. Tudor Price's statement of claim, it is unnecessary to determine whether it is also scandalous, frivolous or vexatious contrary to Rule 221(1)(c), or an abuse of the Court's process contrary to Rule 221(1)(f). I would simply note that the relief sought in paragraph 45 (lost salary, pay-at-risk and pension benefits) has already been granted through the grievance process.

[34] Similarly, the relief sought in paragraph 46 (costs associated with Mr. Tudor Price's litigation with AAFC since August 2011) has been adjudicated by this Court and in other fora: Justice Gleason declined to award costs in Mr. Tudor Price's application for judicial review of the Board's decision; Justice Heneghan awarded Mr. Tudor Price costs in the judicial review of the first final level grievance decision; the decision-maker in the second final level grievance

decision declined to award costs. Mr. Tudor Price has sought judicial review of that decision, and the costs associated with that proceeding will therefore be considered in that context.

[35] The only remaining relief sought by Mr. Tudor Price in this action is found in paragraph 47 of his statement of claim, in which he seeks general, special and aggravated damages, together with interest, for injury to his reputation and mental distress. Mr. Tudor Price's allegation of misfeasance in public office was not addressed in the redetermination of his grievance. Again, whether the decision-maker should have considered this aspect of his claim will be considered in the context of his application for judicial review of that decision.

V. Costs

[36] The Attorney General seeks costs, and has presented a draft Bill of Costs in the amount of \$1,680.00 (excluding disbursements). Mr. Tudor Price represented himself in this matter. The issues were somewhat complex for a lay litigant, and his submissions were well-considered. Given all of the circumstances, I exercise my discretion to award lump sum costs to the Attorney General in the amount of \$1,000.00, inclusive of disbursements and interest.

ORDER

THIS COURT ORDERS that:

1. The statement of claim is struck in its entirety without leave to amend;
2. Lump sum costs are awarded to the Attorney General in the amount of \$1,000.00, inclusive of disbursements and interest.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-87-16

STYLE OF CAUSE: RICHARD TUDOR PRICE v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MAY 16, 2016

**REASONS FOR ORDER AND
ORDER:** FOTHERGILL J.

DATED: JUNE 10, 2016

APPEARANCES:

Richard Tudor Price
On his own behalf

FOR THE PLAINTIFF

Zoe Oxaal

FOR THE DEFENDANT

SOLICITORS OF RECORD:

William F. Pentney Q.C.
Deputy Attorney General of
Canada
Ottawa, Ontario

FOR THE DEFENDANT