Federal Court  Cour fédérale

Date: 20191217

Docket: T-2015-18

Citation: 2019 FC 1611

Ottawa, Ontario, December 17, 2019

PRESENT: Mr. Justice McHaffie

BETWEEN:

VALENTINA HRISTOVA

Applicant

and

CMA CGM (CANADA) INC.

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The labour adjudicator's decision at issue in this application for judicial review tests the limits of what can be considered sufficiently adequate reasons to allow a reviewing court to assess a decision's reasonableness. Although the reasons given for the decision consisted of 252 paragraphs over the course of 87 pages, all but a few paragraphs of this were simply reproduction of the parties' evidence and arguments, often verbatim.

[2] The reasons provide no discussion of contentious factual issues, no analysis of the legal principles or the burden of proof, and little discussion of the evidence. They are, to understate matters, not a model of administrative decision writing. They are close to being unreasonably inadequate. However, having reviewed the reasons in the context of the record and the case as it was presented, I conclude that they are sufficient to satisfy the minimum legal requirements for reasons: being able to understand why the adjudicator made his decision, and allowing the Court to determine whether the conclusion is within the range of acceptable outcomes. The adjudicator made a clear determination on the credibility of the witnesses—a matter central to and largely determinative of the complaint before him—and made consequent findings justifying a conclusion that the termination at issue was justified.

[3] I therefore conclude that the decision is not unreasonable for lack of adequate reasons. This application for judicial review is therefore dismissed.

II. The Issue: Adequacy of the Adjudicator's Reasons

[4] Valentina Hristova was dismissed by her employer, CMA CGM (Canada) Inc., after six years of service starting as a customer service representative and moving up to the position of Reefer Desk Manager. CMA CGM based the dismissal on Ms. Hristova's rude and disrespectful conduct and attitude to fellow employees and supervisors, which culminated in a subordinate tendering her resignation due to stress-related health issues caused by Ms. Hristova. CMA CGM cited breaches of their harassment policy and code of conduct, and referred to unsuccessful attempts over several years to try to change this behaviour.

[5] Ms. Hristova considered the dismissal unjust, and filed a complaint under Division XIV of the *Canada Labour Code*, RSC 1985, c L-2. Ms. Hristova believed the grounds for dismissal to have been fabricated to cover a new manager's desire to get rid of her. Representing herself before the adjudicator, she denied CMA CGM's allegations and accused their witnesses of lying, while pointing to her positive employment reviews, promotions, and a lack of progressive disciplinary actions or warnings.

[6] After six days of hearing plus written evidence and submissions, the appointed adjudicator dismissed Ms. Hristova's complaint. The statement of reasons given for the decision consisted primarily of setting out each party's evidence and argument at length, without analysis or substantive comment. Then, in a few short paragraphs, the adjudicator (i) made credibility findings in favour of CMA CGM; (ii) concluded that Ms. Hristova's conduct constituted harassment and insubordination; (iii) found that CMA CGM had no choice but to terminate Ms. Hristova, as its belief that she would not modify her behaviour was well-founded; and (iv) dismissed the complaint of unjust dismissal.

[7] Other than a brief procedural introduction, the first 248 paragraphs and 84 pages of the award consisted of either verbatim repetition or summary of the evidence and arguments of the parties. This included:

- full reproduction of sworn statements from two employees of CMA CGM;
- summaries of testimony of five other employees or former employees of CMA CGM;
- a two-paragraph summary of initial evidence given by Ms. Hristova, followed by this long descriptive heading:

> 8. SINCE PLAINTIFF DEFENSE WAS PROGRESSING VERY SLOWLY AND WAS LABORIOUS, IT WAS DISCUSSED BETWEEN PLAINTIFF, EMPLOYER'S COUNSEL AND THE UNDERSIGNED ARBITRATOR THAT PLAINTIFF COULD PRESENT HER DEFENSE IN WRITING. PLAINTIFF AND EMPLOYER'S COUNSEL AGREED TO THIS PROCEDURE BY EMAILS. IT WAS AGREED THAT PLAINTIFF WOULD HAVE UP TO A MONTH TO SEND HER WRITTEN DEFENSE TO EMPLOYER'S COUNSEL AND THE UNDERSIGNED ARBITRATOR

- reproduction of essentially all of Ms. Hristova's subsequent written testimony, edited only to remove headings, dates and exhibit references (my review revealed only one paragraph from Ms. Hristova's written testimony that was not included in this reproduction, which appears to have been simply oversight);
- reproduction of all of CMA CGM's written submissions, which appear to have been a form of aid to argument for oral submissions at the close of the hearing; and
- reproduction of all of Ms. Hristova's closing arguments, which were presented in writing after the close of the oral hearing.

[8] After this lengthy repetition of the evidence and arguments, the adjudicator turned to his analysis of the case before him. Given its brevity, and its importance to this application for judicial review, I set it out in its entirety:

> **DECISION**
>
> [249] After review of testimonies and tabled documents, after considering the positions of each parties to this complaint, after reviewing doctrine and jurisprudence and after having duly considered the matter:

[250] I find:

1. That all of the Employer's witnesses gave, under oath, credible and coherent statements. Many of these statements are in large parts corroborated by other witnesses and many are resting on written documents;

2. That Plaintiff's defense consists in a global negation of any wrongdoing and in accusations that all of Employer's witnesses lied under oath and that some documents were made-up. The paroxysm of the accusations is reached when Plaintiff writes: "Romain lied when he testified my work was "impeccable"". (Paragraph 121);

[251] **THUS, I COME TO THE CONCLUSION:**

1. That Plaintiff's behaviour towards Ms. Cagno and Ms. Squires consisted in harassment;

2. That Plaintiff's behaviour towards Ms. Schaff and Ms. Squires consisted in insubordination;

3. That, even when being for several times warned verbally or in writing by her superiors, Plaintiff did not modify her behaviour and rude attitude because she never recognized any harassment or rude attitude from herself;

4. That the Employer was founded to believe that no modification of Plaintiff's behaviour would eventually occur and that, due to all circumstances, Employer had no other choice than to terminate Plaintiff's employment;

[252] **CONSEQUENTLY:**

I DECIDE: that Plaintiff's complaint of alleged unjust dismissal (YM 2007-10876) is dismissed.

[9] The sole issue raised by Ms. Hristova on this application is whether the adjudicator's reasons are inadequate to support a reasonable decision.

III. Analytical Framework: Reasons, Deference, Adequacy and Reasonableness

[10] There is no dispute that the adjudicator was required to give reasons for his decision. This obligation is set out in subsection 242(3) of the *Canada Labour Code*. At the time of the decision, this section required an adjudicator hearing an unjust dismissal complaint to render a decision and send a copy of the decision "with the reasons therefor" to the parties and the Minister of Labour:

Decision of adjudicator	**Décision de l'arbitre**
(3) Subject to subsection (3.1), an adjudicator to whom a complaint has been referred under subsection (1) shall	**(3)** Sous réserve du paragraphe (3.1), l'arbitre :
(a) consider whether the dismissal of the person who made the complaint was unjust and render a decision thereon; and	**a)** décide si le congédiement était injuste;
(b) send a copy of the decision with the reasons therefor to each party to the complaint and to the Minister	**b)** transmet une copie de sa décision, motifs à l'appui, à chaque partie ainsi qu'au ministre.

[11] Section 243 of the *Canada Labour Code* contains a privative clause indicating that the order in an unjust dismissal complaint is "final and shall not be questioned or reviewed in any court." For avoidance of any further doubt, it also states that "no order shall be made, process entered or proceeding taken in any court, whether by way of injunction, *certiorari*, prohibition, *quo warranto* or otherwise, to question, review, prohibit or restrain" the adjudicator. While not ousting the Court's judicial review jurisdiction, this strong indicator of a legislative desire for deference reinforces the applicability of the reasonableness standard of review: *Transport*

Dessaults Inc v Arel, 2019 FC 8 at paras 17-20; *Caron Transport Ltd v Williams*, 2018 FC 206 at para 24; *Payne v Bank of Montreal*, 2013 FCA 33 at paras 32-34, 81.

[12] I note in passing that amendments to the *Canada Labour Code* that have recently come into force now give responsibility for adjudicating unjust dismissal complaints to the Canada Industrial Relations Board rather than appointed adjudicators. However, both the requirement to give reasons and the privative clause remain the same: *Budget Implementation Act, 2017, No 1*, SC 2017, c 20, s 354(2); *Canada Labour Code*, ss 242-243.

[13] Here, the adjudicator did provide reasons for decision. The issue is whether they are sufficient or adequate. The proper approach to judicial review on that issue was set out by Justice Abella for the unanimous Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*]. Paragraphs 14 and 22 of that decision are particularly instructive:

> Read as a whole, I do not see *Dunsmuir* [*v New Brunswick*, 2008 SCC 9] as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses — one for the reasons and a separate one for the result[.] It is a more organic exercise — the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).
>
> […]
>
> It is true that the breach of a duty of procedural fairness is an error in law. Where there are no reasons in circumstances where they are required, there is nothing to review. But where, as here, there *are* reasons, there is no such breach. Any challenge to the

> reasoning/result of the decision should therefore be made within the reasonableness analysis.
>
> [Underline added; italics in original; citation omitted.]

[14] The Supreme Court endorsed Professor David Dyzenhaus's observation that in conducting this reasonableness review, "even if the reasons in fact given do not seem wholly adequate to support the decision, the court must first seek to supplement them before it seeks to subvert them": *Newfoundland Nurses* at para 12 [Emphasis in original]. *Newfoundland Nurses* also instructs that a reviewing court should not substitute its own reasons for those of the decision-maker but may, if necessary, "look to the record for the purpose of assessing the reasonableness of the outcome": *Newfoundland Nurses* at para 15. At the same time, I note the Supreme Court's near concurrent recognition that deference is not a "carte blanche" to rewrite a decision-maker's decision: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 54, quoting Justice Groberman in *Petro-Canada v British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para 56.

[15] As Ms. Hristova points out, Justice Stratas for the Federal Court of Appeal discussed the purpose of reasons in administrative decision-making in *Vancouver International Airport Authority v Public Service Alliance of Canada*, 2010 FCA 158 at paras 11-18 [*VIAA*]. Justice Stratas referred to and discussed the substantive purpose, the procedural purpose, the accountability purpose and the "justification, transparency and intelligibility" purpose of reasons, noting that adequacy should be assessed against these purposes: *VIAA* at paras 11, 16. However, the Supreme Court established in *Newfoundland Nurses* that the requirement of adequate reasons is met if the reasons allow the Court to (i) understand why the tribunal made its decision; and

(ii) permit it to determine whether the conclusion is within the range of acceptable outcomes: *Newfoundland Nurses* at para 16.

[16] While this standard is modest, it ensures that administrative decisions meet the minimum basic requirements of conveying both the outcome and why the decision was made, and reinforces the limited oversight mandate of courts on judicial review. It is nonetheless worth repeating the observation of the Federal Court of Appeal, again in the words of Justice Stratas, that the best administrative decision-makers go beyond the minimum standard and strive to fulfil the other purposes of reasons for decision described in *VIAA*: *Maple Lodge Farms Ltd v Canada (Food Inspection Agency)*, 2017 FCA 45 at para 28; *VIAA* at paras 11-18.

[17] Finally, I note that in reviewing the adequacy of reasons as an aspect of reasonableness, it is appropriate to recognize that reasonableness "takes its colour from the context": *Wilson v Atomic Energy of Canada Ltd*, 2016 SCC 29, at paras 22, 73. What may be adequate reasons to meet the *Newfoundland Nurses* standard in one context may not be adequate in another. The present context is labour relations, an area in which expertise, a legislated desire for deference, and the importance of an efficient and final decision-making process all point to giving wide latitude to adjudicators in both their reasoning and how it is expressed.

[18] Using these guiding principles, I turn to an assessment of the reasons given by the adjudicator.

IV. The Adjudicator's Reasons Are Sparse but Adequate

A. *Understanding Why the Adjudicator Made the Decision*

[19] The complaint before the adjudicator was one of unjust dismissal. This involves an assessment of all of the circumstances of a particular case to determine whether an employee's conduct gives rise to a breakdown in the employment relationship: *Payne* at paras 44-48. As CMA CGM conceded before both the adjudicator and this Court, the employer bears the onus of demonstrating that the dismissal was justified: *Wilson* at para 51.

[20] While this is the legal framework, the matter before the adjudicator was primarily factual. Credibility was a central issue. CMA CGM alleged that Ms. Hristova's rude and disrespectful behaviour toward other employees was unacceptable and persistent, to the extent of causing a subordinate, Ms. Cagno, to resign. This included allegations that Ms. Hristova:

- communicated rudely and aggressively with other employees, notably Ms. Cagno, refused to greet them in the morning, commonly used insults such as "idiot" or "motherfucker," and responded brusquely to inquiries with responses such as "I don't have time for this", "don't send me emails" or turning around without answering;

- responded to requests from her superior, Ms. Squires, by ignoring her, saying "*fatiguant*" [tiresome] or "harassment" loudly and disruptively to her, or saying "I have other things to do";

- micromanaged the tasks that were part of Ms. Cagno's duties, including requiring reports on every call with a customer, and regularly changed her instructions to Ms. Cagno regarding price quotes;

- frequently asked Ms. Cagno to complete Ms. Hristova's own tasks at the last minute and did not respect Ms. Cagno's work hours;

- advised Ms. Cagno not to be nice with other employees, and not to speak to certain employees, creating a toxic environment;

- spoke negatively about other employees, including describing the sales team as "monkeys pushing buttons" and making unpleasant comments about superiors or those with authority in the office;

- oversaw and criticized the work and work habits of employees in other departments that were not her responsibility;

- overrode a working method implemented by her superior, Ms. Schaff, to alleviate the situation with Ms. Cagno, and kept micromanaging when directed not to; and

- refused to recognize any fault or responsibility with respect to her conduct.

[21] CMA CGM alleged that these actions constituted harassment and were contrary to the harassment policy in CMA CGM's Employee Handbook. That policy "prohibits harassment in any form, including verbal, physical and visual harassment," and indicates that an employee deemed to be in violation of the policy may be subject to disciplinary action, up to and including termination of employment.

[22] CMA CGM also alleged that efforts had been made to address these issues with Ms. Hristova on a number of occasions. This included meeting with Ms. Hristova and Ms. Cagno as many as two to three times a week to resolve the problems, and attempting to implement new working methods, each of which was resisted by Ms. Hristova. The communication issues were also addressed at Ms. Hristova's annual review in March 2016.

[23] Evidence in support of these allegations was given by seven employees or former employees of CMA CGM, with reference to a variety of contemporaneous documents such as emails and notes of meetings.

[24] Ms. Hristova's primary response to these allegations was not that the described conduct had occurred but did not amount to harassment, insubordination or grounds for a just dismissal. Rather, it was to present a very different version of events, and accuse each of CMA CGM's witnesses of lying under oath. Her evidence, filed in writing, was replete with statements that other witnesses lied, that she was never rude or disrespectful, and that notes of meetings were false, fabricated and prepared on a much later date than indicated.

[25] Ms. Hristova also contradicted CMA CGM's witnesses by alleging that she received no warnings, and that her termination was not because of misconduct but because of her supervisor's different views about how the reefer business should develop. At the same time, she alleged that she had been fired "on the grounds of an employee [being] stressed and overwhelmed." She also alleged that, contrary to the evidence of a CMA CGM's administrative

director responsible for hiring employees, she had never received the company's Employee Handbook, which set out the harassment policy.

[26] It is in this context that the adjudicator's decision must be reviewed. The credibility of the various witnesses was central, and was made central by the way in which Ms. Hristova framed her case and her response to CMA CGM's evidence.

(1) The credibility findings

[27] It is clear from paragraph 250(1) of the adjudicator's reasons that he accepted the testimony of CMA CGM's witnesses. He provided reasons for doing so, noting that their statements were credible, coherent and corroborated by other witnesses and documents. While it is not detailed, one can readily understand from this statement why the adjudicator accepted the evidence of these witnesses.

[28] Ms. Hristova correctly notes that the adjudicator did not explicitly rule in paragraph 250(2) that her version of events was not credible. Rather, he noted the nature of Ms. Hristova's response as a "global negation of any wrongdoing," accompanied by allegations that the other witnesses were lying, to the extent that she even accused an employee of lying when he praised her work as "impeccable."

[29] Nonetheless, I am satisfied on reviewing paragraph 250 as a whole, and seeking to supplement rather than subvert, that the acceptance of CMA CGM's evidence and the adverse comments as to Ms. Hristova's position constitute an implicit rejection of her evidence. Given

the nature of the evidence, and of Ms. Hristova's denials and allegations that the other witnesses were lying, CMA CGM's version of events and Ms. Hristova's cannot reasonably co-exist with respect to central issues regarding her workplace conduct. In this case, the acceptance of one necessarily implies the rejection of the other.

[30] Ms. Hristova contends that it is impossible to determine the adjudicator's reasoning regarding the burden of proof, and that there is an apparent confusion between credibility and the burden of proof. Ms. Hristova notes that an adjudicator must still determine whether an employer has met their onus of demonstrating that the employee did commit the alleged wrongdoing, and that this is not simply a question of selecting which of two versions of truth is more likely, citing *Kirkland Lake (Town) v Canadian Union of Public Employees, Local 26 (Boyce Grievance)*, [2009] OLAA No 156 (QL), 183 LAC (4th) 74 at paras 28-29, 38.

[31] There are two reasons that I do not accept this submission. First, the burden of proof was not disputed before the adjudicator. CMA CGM expressly recognized in its submissions that it bore the burden. As recognized in *Newfoundland Nurses*, reasons may not include all of the statutory provisions or other details that a reviewing judge (or a party) might prefer, but this does not make it unreasonable: *Newfoundland Nurses* at para 16. Further, as the Supreme Court of Canada noted in *FH v McDougall* (a decision cited by the arbitrator in the *Boyce Grievance*), even where there is no express statement of the standard of proof, it ought to be presumed that the correct standard was applied unless it can be demonstrated that it was not: *FH v McDougall*, 2008 SCC 53 at para 54. The adjudicator's conclusions on credibility do not show any confusion

between credibility and the standard of proof, and nothing in the reasons demonstrates that the wrong burden was applied.

[32] Second, the adjudicator did not simply select which of two versions of truth was the more likely. He expressly accepted the evidence of the CMA CGM employees, based on their credibility. He also commented adversely on Ms. Hristova's evidence, implicitly rejecting it. The adjudicator did not then say that CMA CGM had met its onus to show that the conduct had occurred. However, in the circumstances, this does not make the decision unreasonable. That conclusion is sufficiently clear from the credibility findings as made in the context of the case as presented.

(2) The findings of harassment and insubordination

[33] Having made this finding on the central issue of credibility, the adjudicator next made findings that Ms. Hristova's actions constituted harassment and insubordination. These are important findings given the grounds given for the termination. They are presented by the adjudicator without legal or factual analysis, without discussion of CMA CGM's harassment policy or code of conduct, and without discussion of the adjudications cited by CMA CGM as comparable situations in which harassment was found.

[34] Despite this absence of analysis that would help explain the adjudicator's reasoning to both the parties and a reviewing court, I conclude that in the context of this proceeding, the reasons are sufficient to understand why the adjudicator reached the decision he did. I say this for three reasons.

[35] First, the case before the adjudicator was presented and framed as a primarily factual dispute. While this does not absolve the adjudicator from being satisfied that the dismissal was justified in all of the circumstances, the main conflict the adjudicator was called on to resolve was between the version of events presented by CMA CGM and that presented by Ms. Hristova. Ms. Hristova's argument that she did not engage in harassment was based on an assertion that she was never rude or disrespectful, did not engage in the conduct alleged, and that the other witnesses were lying. This was not accepted by the adjudicator as a factual matter. Even though Ms. Hristova was self-represented, the manner in which she framed her case and arguments must be considered in assessing the adequacy of the adjudicator's reasons.

[36] Second, as CMA CGM points out, there is an element of the facts speaking for themselves in this matter. Having accepted the facts as presented by the CMA CGM witnesses, the conclusion that Ms. Hristova's behaviour constituted harassment toward Ms. Cagno and Ms. Squires is, if not inevitable, at least clearly understandable. In this regard, I give some very limited recognition to the fact that the adjudicator did not just conclude that Ms. Hristova's behaviour constituted harassment, but rather that her "behaviour towards Ms. Cagno and Ms. Squires" constituted harassment, thereby identifying the particular behaviour that was recognized as harassment.

[37] Similarly, the adjudicator accepted Ms. Squires' evidence that Ms. Hristova would sometimes ignore her and at other times would be loud and aggressive to her, make unpleasant comments about her, and accuse her of being "*fatiguant*"; and Ms. Schaff's evidence that Ms. Hristova would refuse to abide by working methods implemented by Ms. Schaff and would

intimidate Ms. Cagno when Ms. Cagno did comply with them. Having done so, the adjudicator's conclusion that "Plaintiff's behaviour towards Ms. Schaff and Ms. Squires consisted in insubordination" is understandable without requiring further explanation.

[38] Third, the findings of harassment and insubordination, while important, were not the ultimate finding of the adjudicator. The issue before him was whether the dismissal was unjust. The findings of harassment and insubordination are themselves part of the reasons explaining the overall conclusion that the dismissal was just. The parties and the Court must be able to assess why the adjudicator decided that the dismissal was just. While each reason given could in turn lead to another "Why?" question, the requirement to explain becomes attenuated the further one moves from the main question.

(3) The findings regarding sanction

[39] The final two findings of the adjudicator, set out in paragraphs 251(3) and (4), relate to the sanction of dismissal. The adjudicator found that Ms. Hristova did not modify her behaviour or recognize any wrongdoing despite several warnings. He thus accepted as well-founded CMA CGM's belief that no behaviour modification would occur, and that they had no choice but to dismiss Ms. Hristova.

[40] I find these conclusions, while brief, sufficient to understand why the adjudicator accepted that dismissal was just, even though the warnings were the only arguable form of progressive discipline implemented.

[41] The reasons of the adjudicator on this issue are different from those at issue in *Lloyd v Canada (Attorney General)*, 2016 FCA 115, raised by Ms. Hristova in her submissions. There, the adjudicator provided reasons for concluding that the employer was justified in "imposing discipline," but provided no reasons why the particular suspension was justified even though only two of the acts of misconduct on which the sanction had been imposed had been established. In the absence of such reasons, the Court of Appeal found that the reasons did not meet the requirements of *Newfoundland Nurses*: *Lloyd* at paras 10, 19-24. In the present case, the adjudicator did set out in paragraphs 251(3) and (4), however briefly, his reasons for finding that the sanction was justified in the context of the facts as found by him.

(4) Understanding the reasons for the finding of just dismissal

[42] Overall, I am satisfied that the reasons given by the adjudicator are just enough to understand why the complaint was dismissed. CMA CGM's allegations of harassing and insubordinate conduct by Ms. Hristova were accepted as true, while Ms. Hristova's denial of these facts and allegations that CMA CGM's witnesses were all lying were rejected. The adjudicator accepted that CMA CGM had tried to address these issues with Ms. Hristova within the context of her continued employment, only to be met with outright denial that there was a problem, such that termination was justified in the circumstances. I find that there are just enough "dots on the page," to use Justice Rennie's evocative language, to allow the Court to connect them and understand why the adjudicator decided as he did: *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at paras 9-11; *Caron Transport* at para 72.

B. *Determining Whether the Conclusion is Within the Range of Acceptable Outcomes*

[43] For similar reasons, I am satisfied that the reasons are sufficient to permit the Court to determine whether the adjudicator's conclusion is within the range of acceptable outcomes. As instructed by *Newfoundland Nurses*, the court may "look to the record for the purpose of assessing the reasonableness of the outcome": *Newfoundland Nurses* at para 15. That record, much of which is repeated in the body of the adjudicator's decision, included the evidence of harassing and insubordinate conduct described above. It also included the labour arbitration decisions placed before the adjudicator. While it is unsatisfying that those decisions were not discussed or analyzed by the adjudicator, they are referenced as having been reviewed, and give examples of harassment findings based on comparable factual scenarios.

[44] The adjudicator explained the reasons for his credibility conclusions sufficiently to allow the Court to conclude that they were reasonable, and set out the steps that took him from those credibility conclusions to the determination that the dismissal was just. While it takes some looking to the record and supplementation of the reasons to do so, both the conclusion that there was sanctionable conduct and the conclusion that the sanction of dismissal was just can be assessed as reasonable on the reasons and record as they stand: *Caron Transport* at paras 73-74, adopting *Payne* at paras 80-82.

C. *Alleged Failure to Consider Factual Discrepancies*

[45] Ms. Hristova raises a number of issues that she describes as "important factual discrepancies" which were not addressed by the adjudicator in his reasons. As noted above,

Newfoundland Nurses establishes that administrative decisions are not rendered unreasonable simply by virtue of the fact that the reasons do not include all of the arguments or details that may be preferred: *Newfoundland Nurses* at para 16. While the absence of discussion or analysis on a central factual or legal issue may certainly render a decision unreasonable in some cases, I do not find that any of the discrepancies raised by Ms. Hristova were of such a nature.

[46] For example, Ms. Hristova contends that the adjudicator failed to address an alleged discrepancy between Ms. Schaff's statement at the termination meeting that CMA CGM had a "zero tolerance" policy toward harassment and the text of the policy, which refers to violations being "subject to disciplinary action, up to and including termination of employment." Ms. Hristova did not raise this alleged discrepancy during the course of the hearing, either in her evidence or in final argument. CMA CGM did not rely on a "zero tolerance" policy in either their termination letter or their submissions to the adjudicator. In the circumstances, I see no reason that the adjudicator was required to address Ms. Schaff's "zero tolerance" statement in his reasons in order for the decision to be reasonable.

[47] Ms. Hristova also points to a memorandum that she received on being hired, which lists documents she was given at the time. The memorandum does not include the Employee Handbook or harassment policy, which Ms. Hristova says supports her evidence that she did not receive those documents. However, the adjudicator clearly accepted the evidence of CMA CGM's administrative director that Ms. Hristova did receive the documents, and rejected Ms. Hristova's denial. While better reasons might have referred to the memorandum—or to Ms. Hristova being on the list of employees who had completed training on the company's Code

of Ethics, which also condemns all forms of harassment—failing to do so does not make the decision unreasonable. It is not this Court's role to re-engage in assessment of specific pieces of evidence to determine whether they might have influenced the outcome, particularly where they pertain to a subordinate fact such as whether Ms. Hristova received the Employee Handbook when she was first hired.

[48] Similarly, the various rhetorical questions that Ms. Hristova poses in an effort to undermine the reasonableness of the adjudicator's decision (Why was she promoted? Why didn't the company intervene if Ms. Hristova's conduct was so egregious? Why weren't they more proactive in attempting to curb Ms. Hristova's behaviour?) may well have been persuasive advocacy before the adjudicator if asked at that time. However, they amount to requests for this Court to reweigh the factors and evidence for and against a credibility finding made by the adjudicator. Again, while these questions might have been expressly answered in better reasons, the decision is not unreasonable because they were not answered. Given that these issues essentially amount to sub-arguments that Ms. Hristova's version of events ought to have been considered credible, a position rejected by the adjudicator, I do not view them as being in the category of "critical issues" on which silence can make a decision unreasonable: *Rogers Communications Canada Inc v Metro Cable TV Maintenance*, 2017 FCA 127 at para 23.

[49] Finally, Ms. Hristova points to the fact that the "List of Exhibits" attached to the adjudicator's reasons sets out only the first 38 exhibits filed by Ms. Hristova and not the remaining 65 exhibits. This issue was raised in Ms. Hristova's notice of application. In response,

when filing the documents making up the tribunal record with this Court in response to Ms. Hristova's Rule 317 request, the adjudicator stated that [translation]:

> For some unexplained reason, the listing of exhibits P-39 to P-103 inclusive was not undertaken in the annex *List of Exhibits*. However, these exhibits were received included with the *Plaintiff's Position* document reproduced at paragraph 243 of the arbitral award. I read all of these exhibits and they were taken into account in my deliberations.

[50] I give no weight to the arbitrator's statement filed with the certified tribunal record. The situation is akin to that in *Canada (Human Rights Commission) v Canada (Attorney General)*, 2012 FC 445, in which a registry official of the Canadian Human Rights Tribunal filed a covering letter indicating that certain expert reports were not taken into consideration by the officer. Justice Mactavish gave no weight whatsoever to the statement, indicating that it was an improper attempt to respond to fairness arguments raised in the application and "shore-up" the decision, and was contained in an unsworn letter from someone other than the decision-maker: *CHRC* at paras 182-189. While the statement here comes from the decision-maker himself, it remains an unsworn letter seeking to address an issue raised on judicial review. I am not prepared to give it weight.

[51] Nonetheless, it is clear from the adjudicator's decision itself that the exhibits, as well as the parties' submissions regarding them, were before the adjudicator. The lengthy recitation of the evidence and argument includes evidence and submissions speaking to both the exhibits identified in the "List of Exhibits" and the exhibits that were not listed. It therefore appears even from the face of the decision that the absence of the final 65 exhibits from the list was a matter of administrative oversight rather than a sign that they were not reviewed or part of the record.

V. Conclusion

[52] I sympathize with Ms. Hristova's frustration in the face of the adjudicator's reasons. Termination of employment is a serious matter and of central importance to Ms. Hristova. After representing herself through lengthy adjudication proceedings, one can readily understand why Ms. Hristova expected her evidence and arguments to be given a more thoughtful and thorough treatment by the decision-maker charged with assessing her case. However, while the *Canada Labour Code* provides an opportunity for pursuing a complaint, it also sets out clear restrictions on challenging an adverse outcome before this Court. Following that legislative guidance and applying the modest threshold for reasons established by the Supreme Court of Canada, I conclude that the adjudicator's reasons were just sufficient to be reasonable.

[53] I also have sympathy for Ms. Hristova's submissions regarding the "message" that is sent by the Court recognizing such minimal reasons as adequate. The best I can do to avoid the suggestion that such reasons are to be encouraged is repeat the statement of Justice Stratas at paragraph 28 of *Maple Lodge*:

> The best administrative decision-makers—the ones that have the strongest reputations and command public confidence—go beyond the minimum. They strive to fulfil the many important substantive and procedural purposes of reasons for decision[.] They do so without any sacrifice of timeliness, efficiency, brevity, and practicality. [Citation omitted.]

[54] The application for judicial review is therefore dismissed with costs. The parties indicated their expectation that they could reach agreement on the quantum of such costs. I encourage them to do so.

[55] As a final matter, I note that the style of cause in this application appears to misname the respondent as “CMA CMG (Canada) Inc.” In the interest of accuracy, the style of cause is amended to name the respondent as “CMA CGM (Canada) Inc.”

JUDGMENT IN T-2015-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed, with costs.

2. The style of cause in this matter is amended to name the respondent as "CMA CGM (Canada) Inc.".

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2015-18
STYLE OF CAUSE:	VALENTINA HRISTOVA v CMA CGM (CANADA) INC
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	OCTOBER 21, 2019
JUDGMENT AND REASONS:	MCHAFFIE J.
DATED:	DECEMBER 17, 2019

APPEARANCES:

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André Royer Sandrine Mainville	FOR THE RESPONDENT

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