Federal Court  Cour fédérale

Date: 20200422

Docket: T-1076-19

Citation: 2020 FC 544

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, April 22, 2020

Present: The Honourable Mr. Justice LeBlanc

BETWEEN:

GUY VEILLETTE

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for the judicial review of the dismissal of a grievance against the Canada Revenue Agency [CRA] by the applicant, pursuant to the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 [Act]. According to this grievance, the CRA allegedly failed to

offer the applicant a permanent appointment as an MG-05 level team leader, despite the promise he was made to this effect.

[2] For the following reasons, the application is dismissed.

II. Background

[3] The applicant, who was self-represented, is a career public servant. He has had various jobs, including income tax auditor, and close to 30 years of service with the CRA. As of November 2013, he held the acting position of team leader [Acting Position] at the Audit Division, Small and Medium Sized Businesses, at the CRA tax services office in Montréal [Audit Division]. This position was at the MG-05 level and the language requirements were "French essential".

[4] The acting position ended in March 2017, for budgetary reasons, according to what the applicant was told at the time, and was abolished a few months later for operational reasons. The applicant contested the abolition but his grievance was dismissed. His performance in this position, at least for the period of April 1, 2016, to March 31, 2017, met all expectations and occasionally exceeded them. The applicant stated he never had any language issues during his acting period.

[5] In the meantime, the applicant qualified for a permanent appointment to a MG-05 level team leader position, under a staffing process launched in the summer of 2016. His name was added to a pool of qualified candidates [Pool], which was available to CRA managers in the

targeted region for staffing purposes, from November 1, 2016, to January 31, 2019. However, on October 27, 2017, the applicant was advised that following an evaluation of his language skills in his second language, English, conducted in the summer of 2017, he had not reached the required oral proficiency level and, as a result, he would no longer be considered for bilingual team leader positions, until he reached this level.

[6] When the Pool expired on January 31, 2019, the applicant had not received any offer to a permanent position as an MG-05 level team leader, whereas several candidates from the Pool had been appointed. These appointments were all for positions designated "bilingual imperative", a language profile the applicant did not meet.

[7] On February 18, 2019, the applicant filed the grievance that is at the heart of the present proceeding. The grievance is worded as follows:

> [TRANSLATION]
> I challenge the employer's decision to not fulfill its promise, its commitment to me, namely refusing to offer me a permanent MG-05 appointment. I was a qualified candidate before the pool expired on January 31, 2019.
> (Respondent's Record, Tab 29, p 83)

[8] According to the applicant, this "promise" or "commitment" results from an email exchange in the fall of 2015, while he was in the Acting Position, between him and the assistant director of the Audit Division at the time, Guylaine Gaudreault. During this exchange, she noted her [TRANSLATION] "commitment to [the applicant] for a unilingual MG-05 position if the opportunity were to arise for a permanent appointment" (Applicant's Record, p 19).

[9] In terms of corrective measures under the grievance, the applicant [TRANSLATION] "ask[ed] to be appointed as a permanent MG-05 and retroactively receive the salary associated with this position to the date (2017) of the first acting MG-05 appointment in the SME sector of the Audit Division of a candidate not in the pool of qualified candidates" (Respondent's Record, Tab 29, p 83).

[10] The grievance procedure the applicant began included four levels. I note that at each step of the proceeding, he indicated he wanted a ruling on his grievance without a hearing.

[11] The applicant did not receive a decision at the first level, as the official designated to hear the grievance at that stage of the proceeding was absent for a period that exceeded the time allowed to rule on said grievance. He therefore decided to transfer his grievance to the second level. He did this on March 19, 2019. The following day, he added written arguments.

[12] Stating he was [TRANSLATION] "disappointed" at not having received a decision at the first level, the applicant added that the Job Opportunity Advertisement that led to the creation of the Pool stated that permanent, MG-05 level team leader positions to be filled could have various linguistic profiles. This made it possible, in his opinion, to staff [TRANSLATION] "unilingual French" team leader positions, considering the makeup of the Audit Division and the successful experience he had with regard to the Acting Position he held for close to four years with no language problems. He concluded that the claims that the candidates for the positions filled from the Pool must necessarily be bilingual to hold such a position [TRANSLATION] "are false" (Respondent's Record, Tab 25, pp 75–76). Lastly, the applicant submitted that his grievance was

allowable under the collective agreement tying him to the CRA [Collective Agreement], considering there was no other recourse available to him to present his complaints. This point was allowed by the CRA.

[13] On April 18, 2019, the applicant still had not received a reply to his grievance and he therefore transferred it to the third level of the procedure. In his transmission email, the applicant included the arguments he made at the second level and corrected some facts related to the content of the email from [TRANSLATION] "last February", the subject of which was [TRANSLATION] "[H]arassment complaints" (Respondent's Record, Tab 9, pp 30–31). A few days later, on April 23, he finally received a response from the decision maker at the second level: his grievance was dismissed.

[14] The grievance was also dismissed at the third level. Not satisfied, the applicant transferred his grievance to the final level. He then provided clarifications on some of his allegations. In particular, he noted that it is common practice at the Audit Division to assign candidates to positions, including the MG-05 level team leader position, even if they did not meet the language requirements of the position. He added that there was [TRANSLATION] "great flexibility surrounding the applicable rules" (Respondent's Record, Tab 8, pp 27–28).

[15] He also stated that the shortage and lack of experience of MG-05 level team leaders were a [TRANSLATION] "great source of concern" according to a [TRANSLATION] "manager on the extended management team in the Quebec region". He found it difficult to explain why, in this

context, candidates with less experience were chosen for more recent appointments in the Audit Division (Respondent's Record, Tab 8, p 28).

[16] On June 24, 2019, the applicant's grievance was dismissed at the final level by Dan Couture, Assistant Commissioner of the Human Resources Branch of the CRA. Assistant Commissioner Couture stated first that he did not feel that the CRA broke any promise or commitment to the applicant with regard to a potential appointment to the MG-05 level position of team leader. Referring more specifically to the commitment Ms. Gaudreault made, Mr. Couture noted that it was for a team leader position with a "French essential" language profile, if the opportunity were to arise. However, he noted that this opportunity never arose, and the Pool was not used to fill a MG-05 level team leader position with such a language profile (Respondent's Record, Tab 4, p 12).

[17] Mr. Couture also noted that all the permanent appointments made from the Pool were for positions with a "bilingual imperative" language profile. He concluded that since the applicant did not meet the requirements of this language profile, the fact he did not receive any appointment offers, even though his name appeared in the Pool, did not violate any CRA staffing policies. He also concluded that the appointments made from the Pool were done in accordance with the needs of the sectors in which they were made (Respondent's Record, Tab 4, p 12).

[18] The applicant presented a series of criticisms against Assistant Commissioner Couture's decision, which can be grouped into four categories. The first deals with deadlines needed to process his grievance. These deadlines are set out in the *Federal Public Sector Labour Relations*

Regulations, SOR/2005-79 [Regulations], and the Collective Agreement and, according to the applicant, were not met, which allegedly interfered with his right to procedural fairness.

[19] The second category of criticism involves the inaccuracy of certain facts, taken from the "précis" prepared for the decisions made at various levels of the grievance procedure. In particular, the applicant feels that it was inaccurate to indicate that no acting position was offered if the chosen candidate did not meet the language requirements or that it was false to state that a candidate who did not meet a staffing requirement could not continue in the staffing process.

[20] The third category of criticism involves the conclusion by Assistant Commissioner Couture regarding the commitment Ms. Gaudreault made, which the applicant feels was unreasonable and even in bad faith. Lastly, the applicant criticizes Assistant Commissioner Couture for not providing sufficient reasons for his decision regarding:

> a. the fact there was no opportunity for a unilingual French appointment;
>
> b. the operational requirements and needs identified;
>
> c. the different language context and needs since the MG-05 pool was created;
>
> d. the staffing needs for permanent appointments for bilingual imperative positions; and
>
> e. the needs in the sectors where appointments were made.
>
> (Applicant's Record at para 40)

III. Issues and standard of review

[21] In my opinion, this case raises the following two questions:

a. Did the CRA violate the rules of procedural fairness when processing the applicant's grievance?

b. Did Assistant Commissioner Couture, when dismissing the applicant's grievance, commit an error justifying the intervention of the Court pursuant to subsection 18.1(4) of the *Federal Courts Act*, RSC 1985, c F-7?

[22] It is well established—and the parties do not contest this—that the judicial review of procedural issues is done on a standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). In such a case, the relevant question is whether the procedure followed was fair with regard to the overall circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[23] As for the second issue, it is not challenged that the standard of review is reasonableness. At the time the parties submitted their respective arguments to the Court record, there was no doubt about this (*Cox v Canada (Attorney General)*, 2008 FC 596 at para 11; *Hagel v Canada (Attorney General)*, 2009 FC 329 at para 27; *Green v Canada (Aboriginal Affairs and Northern Development)*, 2017 FC 1123 at para 16; *Blois v Canada (Attorney General)*, 2018 FC 354 at para 30).

[24] Since then, the Supreme Court of Canada rendered its decision in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], a case that provided it with "an opportunity to re-examine its approach to judicial review of administrative decisions" (*Vavilov* at para 1).

[25] However, in my opinion, this decision changes nothing in terms of the standard of review for the second issue, which is presumed to be reasonableness (*Vavilov* at paras 10 and 25). I will merely add, for the purposes of this case, that as the Supreme Court of Canada stated, "a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the 'range' of possible conclusions that would have been open to the decision maker, conduct a de *novo* analysis or seek to determine the 'correct' solution to the problem." It must "consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable" (*Vavilov* at para 83).

[26] In the context of litigation resulting from the Act in particular, this means the Court must show restraint with regard to decisions by those with decision-making power. This means that in this case, I am not to make the decision Assistant Commissioner Couture should have made or assess the decision he made against the decision I might have made in his place (*Teti v Canada (Attorney General)*, 2016 CFA 82 at para 5).

[27] Before conducting my analysis, I also find it important to note that, to determine the reasonableness of Assistant Commissioner Couture's decision, I am entitled to consider not only the reasons he provided in support of his decision, but also the reasons exposed in the two previous levels as well as the précis prepared for each of the decision-making levels of the grievance procedure, although the decision that really matters is the one from the final level (*Wanis v Canadian Food Inspection Agency*, 2013 FC 963 at para 21; *Tacicek v Canada (Border*

Services Agency), 2014 FC 281 at para 44; *Wilkinson v Canada (Attorney General)*, 2016 FC 1062 at para 15; *Tibilla v Canada (Attorney General)*, 2011 FC 163 at para 34 [*Tibilla*]).

IV. Analysis

A. *There was no violation of the rules of procedural fairness*

[28] I note that the applicant's argument on this issue relies mainly on the fact that the deadlines provided in the Regulations and the Collective Agreement for processing his grievance were not respected. In particular, he submits that the 20-day deadline set out in the Regulations and the Collective Agreement to reply to a grievance, for the first three levels of the procedure at least, were exceeded, as he waited 44 days before finally obtaining a first reply to his grievance.

[29] For a procedural error such as the non-respect of a procedural deadline to result in a violation of the rules of procedure, there must be a prejudicial effect (*Taseko Mines Limited v Canada (Environment)*, 2019 FCA 320 at para 62; *Uniboard Surfaces Inc v Kronotex Fussboden GmbH et Co KG*, 2006 FCA 398 at para 24; *Ellis-Don Ltd v Ontario (Labour Relations Board)*, 2001 SCC 4 at para 49; *Pounall v Canada (Border Services Agency)*, 2013 FC 1260 at para 20). I do not feel that this was demonstrated in the present case.

[30] Indeed, the CRA was entirely entitled, under the combined effect of clauses 34.12 and 34.13 of the Collective Agreement, to not reply to the grievance at the first level of the grievance procedure. Moreover, the case law recognizes, implicitly at least, that an employer may choose to not reply to a grievance, and this non reply will be interpreted as a rejection of the grievance

(*McWilliams v Treasury Board (Correctional Service of Canada)*, 2007 PSLRB 58 at para 22; *Employee No 1 v Canada*, 2004 FC 1221 at para 17; *Persons wishing to adopt the Pseudonyms of Employee No 1 v Canada*, 2005 FCA 228; *Canada v Employee No 1*, 2007 FCA 152 at para 8).

[31] Technically, therefore, the fact the CRA did not reply to the applicant's grievance does not constitute a procedural error. On this, I note that the applicant was advised that the public servant who was to reply to his first-level grievance was absent and would not return to his position until the deadline to reply had expired. An application to suspend the deadline was sent to the applicant, but he insisted on a reply to his grievance in the prescribed deadline. In the circumstances, the decision to not reply to the grievance, at that stage of the procedure, was defensible, insomuch as a justification is required for not replying.

[32] The applicant submits that not replying to his grievance at the initial stage of the grievance procedure caused him prejudice as it deprived him of the opportunity of using the reply to enhance his arguments at the higher levels. In fact, he states that the first level reply has a value that the others do not have, as the grievance is processed at that stage by a manager that is closer and more aware of the ongoing operations than those at the subsequent levels.

[33] This argument cannot be accepted because, as I just stated, the procedure governing the applicant's grievance provides that this can happen; the CRA can choose to not reply at the first level of the procedure.

[34] Other than the mere fact that the response deadline was exceeded at the second level, the applicant did not note any specific prejudice tied to this missed deadline. In any event, I do not see any as the applicant was able to present—and refine—his arguments from the second level up to the last level.

[35] In closing on this first issue, I would note that it is still possible to remedy the issue in a timely manner, a breach of the rules of procedure must be raised at the earliest opportunity, otherwise the party that plans to raise it for the first time in judicial review may be barred from doing so (*Hennessey v Canada*, 2016 FCA 180 at paras 20–21; *Maritime Broadcasting System Limited v Canadian Media Guild*, 2014 FCA 59 at para 67).

[36] In this case, other than the fact he was [TRANSLATION] "astonished" or [TRANSLATION] "disappointed" that there was no decision at the first level, the applicant did not share his complaints with regard to the missed deadlines during the grievance procedure (Respondent's Record, Tab 9, p 31; Respondent's Record, Tab 25, p 75).

B. *Assistant Commissioner Couture's decision is reasonable*

[37] Other than the issue of missed deadlines, which I just addressed, I note that the applicant also criticized Assistant Commissioner Couture for having rendered his decision based on erroneous facts, not providing sufficient reasons for some of his remarks and for concluding unreasonably—even in bad faith—that the commitment Ms. Gaudreault made to him was not breached.

[38] These criticisms involve the validity of Assistant Commissioner Couture's decision.

(1) Erroneous facts argument

[39] These facts are from précis—or recommendations—prepared at each stage of the grievance procedure for the decision makers at each level. The applicant identifies four errors, the first three drawn from the précis prepared for the second level of the procedure and the fourth from the précis prepared for the third level.

[40] The first error involves the following excerpt: [TRANSLATION] "that means that if a candidate does not meet a staffing requirement, he or she will not continue in the process" (Respondent's Record, Tab 18, p 56). The applicant submits that this statement is inaccurate, as the CRA did inform him a few weeks prior to the expiration of the Pool, that he was eligible for an appointment.

[41] The second error involves the following excerpt: [TRANSLATION] "no acting appointment was offered unless the candidate met the language requirements" (Respondent's Record, Tab 18, p 56). The applicant submits that this statement is false because candidates were allegedly given acting positions without meeting the proper language requirement at the time, in accordance with the flexibility of the CRA staffing program.

[42] The third error the applicant raised is from the following excerpt: [TRANSLATION] "the candidates who have right to recourse for these bilingual imperative appointments are those who were assessed and have obtained the required levels" (Respondent's Record, Tab 18, p 56). This

statement is inaccurate, in his opinion, as he himself had intermittently been offered, from March 2017 to the filing of his grievance, several rights to recourse against appointments at the MG-05 level.

[43] Lastly, the fourth error involves the following excerpt from the précis prepared at the third level of the grievance procedure: [TRANSLATION] "[c]ontrary to the employee's claims, he was not eligible or qualified for a permanent appointment to a bilingual MG-05 position" (Respondent's Record, Tab 13, p 43). This is false, according to the applicant, as he never made this claim.

[44] As the Supreme Court of Canada again stated in *Vavilov*, and as the CRA also stated in its written arguments, in a judicial review of an administrative decision maker's decision, we must be careful not to conduct a "line-by-line treasure hunt for error" (*Vavilov* at para 102).

[45] Unfortunately for the applicant, he seems to have fallen into this trap.

[46] On the one hand, the first and third errors of fact the applicant raised were from the analysis of the admissibility of the applicant's grievance in the précis prepared at the second level. As I have already stated, the CRA conceded that the applicant's grievance was allowable. Therefore, supposing that the two excerpts in question did contain erroneous information, these errors of fact are without consequence since the CRA agreed with the applicant on this issue very early in the procedure. Moreover, this issue was not raised again in the fourth level précis, prepared for the decision Assistant Commissioner Couture was to render. It was therefore not a

genuine issue in the grievance procedure; indeed, Assistant Commissioner Couture did not address it, as he was not required to do so.

[47] Additionally, these two excerpts are used out of context and without the necessary nuances, which shows the risks of the “treasure hunt” approach discouraged by the Supreme Court of Canada.

[48] The same can also be said of the fourth alleged error, in which the applicant is credited with stating that he considered himself eligible or qualified for a permanent appointment to a bilingual MG-05 position. Again, this “error” is of no consequence. Indeed, I cannot determine how, if it had not been made, it would have changed Assistant Commissioner Couture’s conclusion that the fact the applicant did not receive any appointment offers during the lifespan of the Pool was not a violation of the applicable CRA staffing policies as all the permanent appointments made using the Pool were for positions with a “bilingual imperative” language profile, which the applicant did not have.

[49] Lastly, with regard to the second error the applicant raised, with regard to the language profile of those who accepted acting appointments, the CRA’s position is that these individuals met the language requirements of the acting positions they were offered. The applicant argues the contrary. However, as I indicated to the applicant at the hearing, it is not sufficient to merely state a fact before an administrative decision maker; there must at least be an attempt to prove it, in particular since the applicant, by mentioning these appointments, is attempting to establish

that he was unfairly treated by the CRA. This accusation is serious and required at least a commencement of proof.

[50] It is well established, even in the context of labour relations grievances, that the Court cannot consider evidence that was not before the decision maker (*Tibilla* at para 34). This means, in my opinion, that it is the responsibility of the person filing a grievance to ensure that, at least at the final level of the grievance procedure, all the evidence that could support his or her claims are presented to the decision maker.

[51] In this case, there is nothing in the file that would support the applicant's allegation that among those who received acting appointments, some did not meet the language requirements of the positions filled. In this context, Assistant Commissioner Couture cannot be criticized for ignoring evidence that would contradict the position of the CRA labour relations experts who prepared the précis for the grievance procedure and, presumably, conducted the necessary research in the CRA staffing records to do so. Moreover, in this case, the question was asked by the labour relations advisor who had drafted the précis for the second level of the procedure, the files were researched and the answer confirmed that these acting positions were filled by employee(s) who met the language requirements of the positions in question (Respondent's Record, at pp 66–67).

[52] This first type of criticism against Assistant Commissioner Couture's decision can therefore not be considered.

(2) Insufficient reasons argument

[53] At the outset, it must be stated that this type of argument does not trigger the rules of procedural fairness, contrary to the applicant's allegations, but the reasonableness of the administrative decision maker's decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 21–22 [*Newfoundland Nurses*]).

[54] I will recall that the applicant criticizes Assistant Commissioner Couture for not providing sufficient reasons for his decision with regard to certain statements, which can be summarized as follows:

a. The opportunity for a unilingual Francophone position did not arise; and

b. The permanent appointments to MG-05 level team leader positions, made using the Pool, were all for "bilingual imperative" positions, in accordance with the operational requirements and needs of the areas where the appointments were made.

[55] In relation to these two statements, the applicant also criticizes Assistant Commissioner Couture for not having provided details on the changes, in the work environment at the Audit Division, that could have justified why appointments made from the Pool were only for "bilingual imperative" positions, when he had held an MG-05 level team leader position with a "French essential" profile at that Division for close to four years, ending at the end of March 2017, and the job advertisement that led to the Pool's creation did not specify that the staffing done from the Pool would only be for "bilingual imperative" positions.

[56] In *Vavilov*, the Supreme Court of Canada restated the already well established principles regarding the manner in which to evaluate the reasons of decisions rendered by administrative decision makers. It states that the written reasons provided by such a decision maker "must not be assessed against a standard of perfection" and the fact that the reasons do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside (*Vavilov* at para 91; *Newfoundland Nurses* at para 16).

[57] The reviewing court examining an argument of insufficient reasons must be fully aware that "'administrative justice' will not always look like 'judicial justice'" because, notably, "[a]dministrative decision makers cannot always be expected to deploy the same array of legal techniques that might be expected of a lawyer or judge" (*Vavilov* at para 92). This is one of the reasons the reviewing court must "read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered" and in doing so, may consider "the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker's work, and past decisions of the relevant administrative body" (*Vavilov* at para 94).

[58] The important thing is that the reviewing court must be able to properly understand the decision maker's reasoning process in order to determine whether the decision, as a whole, is reasonable, or is within the range of acceptable outcomes in relation to the legal and factual constraints that bear on the decision (*Vavilov* at para 99; *Newfoundland Nurses* at para 16).

[59] As I have previously mentioned, to determine whether Assistant Commissioner Couture's decision is reasonable, I may consider not only the reasons he provided in support of his decision, but also the précis prepared in support of this decision [Précis], which was signed on June 18, 2019, by Karyne Desjardins, who held the position of senior policy and program analyst at the CRA's Labour Relations Division (Respondent's Record, Tab 5, pp 13–23).

[60] At first glance, a review of the reasons for Assistant Commissioner Couture's decision, when read together with the Précis, shows, in my opinion, that the applicant's complaints were considered and that the resulting findings are based on reasoning that is both rational and logical, and makes it possible to understand the reasons for the decision, namely:

a. The applicant did not receive an offer for a permanent team leader position at the MG-05 level during the period of validity of the Pool because all the offers that were made using the Pool were, in accordance with the CRA's staffing policies and procedures, for positions with a "bilingual imperative" language profile, a profile that the applicant did not meet following an assessment of his language skills a few months after he had qualified in this pool;

b. It is true that management could have decided to use the Pool and, during that period, make permanent appointments to MG-05 level team leader positions with "French essential" language profiles, but the staffing needs were for appointments to "bilingual imperative" positions;

c. The appointments made from the Pool therefore do not breach the commitment Ms. Gaudreault made, since the opportunity for an appointment to an MG-05 level team

leader position did not arise, with the language needs for appointments from the Pool being different; and

d. The applicant did not show how he was systematically excluded from all team leader appointments or how the same rules were allegedly not applied to him as they were to other employees.

[61] This justification is coherent and intelligible but the applicant would have liked to know more about the needs that justified the staffing of only MG-05 level team leader positions with a "bilingual imperative" language profile from the Pool, which resulted in the exclusion of staffing "French essential" positions contrary to what, in his opinion, he had been promised. In other words, he wanted to know how the landscape of the language needs at the Audit Division had changed between the time he held the Acting Position and the date the Pool expired, to justify such a fact, which became an obstacle to the commitment Ms. Gaudreault made.

[62] The fact that the Pool was used only for appointments to team leader positions with a "bilingual imperative" language profile in an administrative region such as Montreal might, at first glance, seem surprising. However, the Court is not here to speculate on what might explain this fact and to substitute its own assessment of the situation for that of the administrative decision maker. As I have previously stated, in a judicial review, the Court must not conduct a *de novo* analysis or seek to determine the "correct" solution to the problem (*Vavilov* at para 83).

[63] Here, the Court is severely lacking evidence to be able to question the reasonableness of the statements in the Précis and Assistant Commissioner Couture's decision, as the applicant is requesting.

[64] As imperfect as the grievance procedure is (Christopher Rootham, *Labour and Employment in the Federal Public Service* (Toronto: Irwin Law Inc, 2007) at 278), in particular when, as in this case, it does not lead to arbitration, it is still true that simply filing a grievance, at least in a situation such as ours, in which the unfairness of a failure to respect a commitment is argued, does not shift the burden of proof to the employer. Even though there are exceptions, the general principle is that the burden is on the person filing the grievance (Halsbury's Laws of Canada (online), *Labour* "Arbitration Law: Substantive Issues: Policy Grievances" in HLA-466 "Onus of Proof and Order of Proceeding"; Donald J.M. Brown and David M. Beatty, *Canadian Labour Arbitration*, 3rd ed (Aurora: Canada Law Book, 2003)). The applicant did not submit any authorities—and I cannot find any—that, in the circumstances of the present case, would shift the burden to the CRA to prove the contrary of what the applicant argued in his grievance.

[65] In other words, the Court does not have the facts at its disposal to question how the language needs for the appointments made from the Pool, or even the operational needs of the sectors in which these appointments were made, were identified. For example, the Court knows nothing about the various operational sectors in the CRA that could—and did—draw from the Pool, the organizational charts of these sectors, their staffing needs, the number of positions to fill and that were filled, and the language profile of each position within each of these organizational charts. Was the acting team leader position the applicant held at the Audit

Division the only such position with a “French essential” language profile in that group or in all the sectors with access to the Pool? The Court does not know.

[66] The Court also does not have any facts before it that would lead it to question the conclusions in the Précis regarding the allegations of unfairness or bad faith that would explain the applicant’s fate and, ultimately, Ms. Gaudreault’s commitment.

[67] These are serious allegations that cannot simply be based on what the applicant says. More is required. Indeed, at the hearing of this judicial review, the applicant, in support of his claims, stated facts that are not on record. Such an approach, as I reminded him, is not allowed in the context of a judicial review (*Tibilla* at para 34).

[68] I will make a last remark about this criticism. Insomuch as the applicant, under the pretext of Ms. Gaudreault’s having failed to respect her commitment, is ultimately questioning the validity of the language requirements of the positions that were filled from the Pool and, therefore, the appointments made in this manner, I cannot help but wonder whether such a collateral attack would not, on its face at least, according to subsection 208(2) of the Act, raise an admissibility issue considering the recourse available under the *Public Service Employment Act*, SC 2003, c 22, ss 12 and 13, and even, perhaps, the *Official Languages Act*, RSC 1985, c 31 (4th Suppl). However, as the CRA did not understand that the applicant’s grievance ultimately concerned these issues and the eligibility of the applicant’s grievance was not debated before this Court, I will say no more on this issue except to note this potential pitfall.

[69] In short, the applicant did not persuade me that it is appropriate to intervene on the ground that Assistant Commissioner Couture's decision was not supported by sufficient reasons. I am satisfied that the decision results from a careful, rational review of the applicant's allegations, and of his observations and those of the CRA managers. It was for the applicant to prove the contrary by means other than his statements alone. He failed to do so.

(3) Argument based on Ms. Gaudreault's commitment

[70] For the same reasons, I cannot say that Assistant Commissioner Couture's conclusions regarding Ms. Gaudreault's commitment were unreasonable. This commitment was conditional on an MG-05 level team leader position with a "French essential" language profile becoming available. This never happened. The Acting Position was available after March 31, 2017, the day the applicant stopped holding the position, but it was abolished a few months later, a decision the applicant challenged in vain.

[71] Technically, therefore, it cannot be argued that the conditional commitment was not honoured. This is just common sense, and I have already responded to the argument that Assistant Commissioner Couture did not sufficiently justify how the operational needs only required the staffing of MG-05 level team leader positions with "bilingual imperative" language profiles from the Pool to the detriment of "French essential" positions, and how this fact, which made it impossible for Ms. Gaudreault's commitment to be met, was not the result of bad faith on the part of the CRA.

[72] I understand the applicant's frustration, given that he held an MG-05 level team leader position for nearly four years, apparently successfully. However, I cannot be of any help to him as the evidence on the record does not allow it.

[73] The CRA is seeking costs. Considering the outcome of this case, it is entitled to them. The costs will be calculated on the basis of Column III, Tariff B, of the *Federal Courts Rules*, SOR/98-106.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, with costs.

"René LeBlanc"
Judge

Certified true translation
This 25th day of May 2020.

Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1076-19
STYLE OF CAUSE:	GUY VEILLETTE v CANADA REVENUE AGENCY
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JANUARY 28, 2020
REASONS FOR JUDGMENT AND JUDGMENT BY:	LEBLANC J.
DATED:	APRIL 22, 2020

APPEARANCES:

Guy Veillette	FOR THE APPLICANT
Patrick Turcot	FOR THE RESPONDENT

SOLICITORS OF RECORD:

None	FOR THE APPLICANT
Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT