Federal Court Cour fédérale

Date: 20201102

Docket: T-1880-18

Citation: 2020 FC 1026

Ottawa, Ontario, November 2, 2020

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

SHAW COMMUNICATIONS CANADA INC

Applicant

and

CHRISTINE AMER

Respondent

<u>JUDGMENT AND REASONS</u>

I. <u>Introduction</u>

[1] This is an application for judicial review of a decision, dated September 25, 2018, determining that the Respondent was unjustly dismissed [the "Decision"], pursuant to an adjudication under Division XIV, Part III of the *Canada Labour Code*, RSC, 1985, c L-2 [the "*Code*"].

II. Background

[2] The Applicant, Shaw Communications Canada Inc., is a federally regulated telecommunications provider. It provides its clients with internet, cable and phone services. The Respondent, Ms. Christine Amer, was a Technical Service Representative [TSR] with the Applicant, as of June 2012. She previously was employed as a Customer Service Representative [CSR] with the Applicant, starting around September 2008.

[3] The Applicant terminated the Respondent on April 17, 2016, for an alleged continued inability to meet the core expectations of her role, "despite verbal and written warnings".

[4] Over the years, different supervisors had conducted periodic performance reviews of the Respondent. Evidence was led before the Adjudicator from three of these supervisors (the "first", "second" and "third" supervisor). Performance reviews completed by other supervisors were also discussed as part of the record. The performance reviews generally considered whether the Respondent "met expectations" in a variety of areas, including, for example, "customer focus", "sales skills", "product knowledge", and "punctuality", among others. The Decision referred to "key performance indicators" in the performance reviews, starting in 2014 and 2015, including customer satisfaction, productivity or average handling time, agent resolution rate, sales and e-billing. The Respondent's performance was assessed in part via customer surveys and audited calls, undertaken by the supervisors.

[5] The Adjudicator considered the Respondent's performance reviews beginning in February of 2011. While the performance reviews considered the Respondent's overall performance across several areas, the problematic targets largely concerned the Respondent's alleged continued failure to:

A. Meet targets for sales and upgrades;
B. Place documentation on the file after every call [Documentation];
C. Confirm email addresses for e-billing [e-Billing]; and
D. Obtain referrals to the customers' family and friends [Refer-A-Friend].

[6] The Respondent's technical skills as a TSR were not in issue, nor was her ability to resolve customers' requests for technical support.

[7] The Respondent was provided with coaching opportunities, largely discussed by the first and second supervisors. The parties disagree on whether the Respondent showed a willingness to improve.

[8] The Applicant alleges that the Respondent's difficulties in performing several of her core job duties as a TSR were exacerbated in December of 2014 or January of 2015, when the Respondent had begun taking college courses and participating in a related four-week internship placement (April to May, 2015) in order to obtain a Medical Office Assistant Diploma. For a period of time, until April or May of 2015, she attended college courses or her placement from 8:00am to 12:00pm and worked in her role as a TSR with the Applicant from 2:00pm to 10:00pm.

[9] In an October 1, 2015 email, the Respondent was warned that if her targets continued to remain unmet, the Applicant may have to proceed with disciplinary action up to and including termination of employment.

[10] A February 16, 2020 notice, titled "Written Notice Re: Performance Expectations" further sought immediate and sustained improvement across the areas of sales, upgrades, e-Billing and Documentation. It warned that:

> Specifically, we are concerned with your performance in **Sales, Upgrades and E-billing** as you have not met these expectations in the last six months. As we have communicated to you on a number of occasions… our expectation is for you to consistently share the benefits of Refer-A-Friend, Programming options and E-billing with our customers, which in turn would aid you in meeting your Sales, upgrades and E-billing targets on a monthly basis…
>
> …
>
> …If we do not see an immediate and sustained improvement by March 31, 2016, we will take further disciplinary action up to and including termination of your employment.

[11] A similar warning was provided in a March 3, 2016 notice titled "Final Notice Re: Performance – Expectations", written by the third supervisor:

> …this continues to be a serious issue and this is your final warning. Our expectation is that you meet the above objectives by March 31, 2016 and sustain thereafter. If we do not see an immediate improvement in your Performance Expectations, we will terminate your employment for just cause.

[12] On April 14, 2016, the Respondent received an email from the third supervisor in reference to a meeting that day, continuing to express concerns. In establishing whether targets

were being met, samples of random calls were audited. This email, with the subject heading "Recap of Meeting", specified:

> On April 5, 2016, I reviewed 14 of your calls via Calabrio and you have consistently failed to discuss E-Billing on your calls. There was 7 times when you could have confirmed the email address on file with the customer which was not done. An additional 5 times there was no email address on file at all and you did not make an offer to sign up or discuss it with the customer. In addition, I came across 4 calls where you assisted a customer and left no documentation on the account.
>
> I am feeling that you are not taking this situation seriously and it concerns me as you have not reached out to me advising of any challenges you might be experiencing with meeting your targets.
>
> Christine as discussed in the meeting we will be reviewing your employment here at Shaw and will make a decision over the next few days and met (*sic*) with you to discuss our decision.

[13] The Applicant terminated the Respondent's employment on April 17, 2016. The reasons for dismissal, dated July 22, 2016, provided by the Applicant under subsection 241(1) of the *Code* [the "Statutory Response"], specified that:

> Ms. Amer consistently performed below expectations in regards to the quality of her work. She continually failed to meet the basic requirements of Technical Service Representative in the areas of sales, upgrades and e-billings, in addition would repeat the unacceptable performance despite blatant warnings to improve…
>
> …
>
> Despite being aware of the consequences, Ms. Amer demonstrated to us that she was unwilling to improve and adhere to our company guidelines. As such, she was terminated with just cause.

[14] The Respondent filed a Canada Labour Code, Part III (Labour Standards) "Complaint Form-Unjust Dismissal", dated June 7, 2016, alleging unjust dismissal. This application arises from the resulting Decision.

I. Decision Under Review

[15] The Adjudicator held that the Respondent's dismissal was unjust. She ordered compensation for loss of salary, including bonuses, benefits and interest from April 17, 2016 up until the date of the Respondent's new employment. She further ordered severance pay, pursuant to section 235 of the *Code*, including interest on the amount, less statutory deductions. Lastly, costs were ordered on a full indemnity basis.

[16] The Adjudicator reviewed the evidence at length, as summarized in the approximately sixty-page Decision. She considered the Respondent's performance dating back to 2008, in her role as a CSR, including performance reviews as early as February 2011 up until termination. The Adjudicator found that:

A. The Respondent performed the technical services required of the TSR position satisfactorily;

B. The evidence did not clearly and convincingly establish that sales, the promotion of upgrades and e-Billing were core expectations of the TSR role;

C. The statistics and figures relied on by the Applicant were not a reliable reflection of the Respondent's performance with respect to sales, the promotion of upgrades and e-Billing, namely that the audited calls did not constitute a representative sample;

D. The Respondent was not provided with an opportunity to question or independently review the statistics and figures, nor her own calls;

E. The concerns in relation to Documentation practices were not established on the basis of the accounts reviewed; and

F. The reliability of the survey results were not established.

[17] Overall, the Adjudicator remained unconvinced that a complete and accurate representation of the Respondent's performance and behaviours had been established on the basis of the figures and statistics led, nor that a culminating incident had been established on the basis of the Applicant's performance assessments undertaken by the third supervisor on March 3, 2016 and/or April 5, 2016.

II. Issues

[18] The issues are:

A. Is the Adjudicator's Decision on unjust dismissal and remedies unreasonable?

B. Was there a denial of procedural fairness in that the Applicant was denied an opportunity to lead evidence or make submissions on determining issues or in that the Adjudicator was biased?

III. Standard of Review

[19] The parties disagree on the standard of review. The Applicant states that the standard of review for issues of procedural fairness is correctness, while the Respondent asserts that the

general presumption of reasonableness review is not rebutted on the facts of this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]).

[20] Decisions of labour adjudicators or arbitrators interpreting statutes or agreements within their expertise, particularly the unjust dismissal provisions of the *Code*, attract a reasonableness standard (*Wilson v Atomic Energy of Canada Ltd*, 2016 SCC 29 at paras 15-16 [*Wilson*]; *Vavilov*, above at paras 83-87). The Adjudicator's reasoning process in relation to its analysis of the core duties of the TSR role and of the appropriateness of the remedies it granted are reviewed on the reasonableness standard.

[21] Questions of procedural fairness require a standard of correctness. This includes the parties' ability to lead evidence and make submissions on allegedly key determining issues, as well as the Applicant's assertion that the Adjudicator was biased. The specific procedural requirements engaged are context-specific and are discussed below (*Vavilov* at para 77; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). A breach of procedural fairness renders the decision invalid (*Cardinal v Director of Kent Institution*, [1985] 2 SCR 643 at para 23).

IV. Analysis

[22] It is the Applicant's position that the Adjudicator based its Decision on issues that were not raised with counsel and upon which no evidence was led. Therefore, the parties did not have an opportunity to address issues upon which the Decision was based. There was allegedly a level of bias demonstrated by the Adjudicator that also tainted her Decision. Additionally, the

Applicant states that the Adjudicator erred in the remedies awarded, by awarding duplicative remedies, ordering unjustified substantial indemnity costs and by inappropriately considering mitigation.

[23] It is the Respondent's position that the finding of unjust dismissal is reasonable, falling within a range of acceptable justifications and outcomes on the basis of the facts and evidence. The Decision on remedies appropriately falls within the broad powers the Adjudicator has under the *Code* and there was no error in the analysis of mitigation. The Applicant was effectively put on notice as it relates to the scope of the remedies granted. Further, the Adjudicator did not violate the principles of procedural fairness and there is no evidence of bias.

A. *The framework for unjust dismissal under the Code*

[24] Sections 240 to 246 of the *Code* permit eligible employees to challenge their dismissal on the basis that the dismissal was unjust. The test governing the Adjudicator's determination in a complaint of unjust dismissal is set out in *McKinley v BC Tel*, 2001 SCC 38 [*McKinley*]. This factual inquiry involves a careful assessment of all the circumstances of a particular case, in order to evaluate the following considerations: (1) whether, on the balance of probabilities, the evidence establishes that the misconduct which forms the basis for dismissal actually occurred, and (2) if so, whether the nature and degree of the misconduct warranted dismissal (*McKinley*, above at para 49). It is a question of proportionality, where "[a]n effective balance must be struck between the severity of an employee's misconduct and the sanction imposed" (*McKinley* at paras 53-54).

[25] While the test arose in a common law context, it has been found to be equally applicable for a determination of whether an employee's dismissal is unjust under the *Code* (*Payne v Bank of Montreal*, 2013 FCA 33 at para 45).

[26] As a preliminary issue, the Respondent asks this Court to assign little weight to the cross-examination of the Respondent on her initial affidavit in this application. It is allegedly not representative of what occurred at the hearing and fails to account for the entire body of competing evidence. Moreover, it is not recognized under the *Federal Courts Rules*, SOR/98-106, which do not provide an opportunity for re-examination after cross-examination. The Respondent had opportunities to object to being subject to additional cross-examination and failed to do so. This evidence will be considered.

B. *Is the Adjudicator's Decision on unjust dismissal and remedies unreasonable?*

(1) Unjust dismissal

[27] The Respondent argued that she was performing well in many aspects of her role as a TSR, including solving customers' technical problems. She was allegedly meeting expectations overall and was responsive to coaching. It was therefore argued that the Adjudicator was entitled to make the findings of fact that she did, amounting to a determination that the Applicant had failed to demonstrate just cause in terminating the Respondent.

[28] The Applicant alleges that the Adjudicator arbitrarily limited the “core duties” of a TSR to technical requirements, although the core duties set out in the Statutory Response were not disputed.

[29] The Adjudicator, in her Decision, stated:

> I conclude, on the evidence before me, and on balance of probabilities, that Ms. Amer satisfactorily fulfilled the “core expectations” of her position as a Technical Service Representative in servicing customers’ technical issues. She may not have met Shaw’s “5 non-negotiable expectations” with respect to Sales, Upgrades and Ebillings but I have concluded that the evidence, particularly the very limited sample of audited calls, did not clearly and convincingly support the conclusions Shaw reached. Further, in the absence of a Job Description I am unable to conclude that the “5 non-negotiable expectations” were the same as Shaw’s “core expectations” of a Technical Services Representative. In the absence of a Job Description, and the weight it presumably would have placed on the skills, abilities and behaviours required in servicing customers’ technical problems, as compared to those required for Sales, promotion of Upgrades, and Ebilling, I am unable to conclude that Shaw’s evidence has established “the requisite standard” and “an inability” on Ms. Amer’s part which rendered her “incapable of performing the job.”

[30] The record shows that the Adjudicator’s conclusion that Documentation, sales, upgrades and e-Billing were not core expectations of the TSR role is unreasonable. These were clearly consistent metrics involved in the Respondent’s performance reviews. The Respondent received coaching, training and periodic communications in relation to these metrics. The concerns were raised month after month since the Respondent’s engagement with the Applicant and were the subject of several warnings. The Respondent acknowledged herself that she recognized her employment was in jeopardy if she failed to meet the targets set by the Respondent. The totality of the evidence demonstrates these targets are key aspects of the Respondent’s TSR role. The

Decision is unreasonable to the extent it relies on this finding. Further, the Adjudicator's reliance on the lack of a "Job Description" in establishing these core duties is unreasonable in light of the entirety of the record.

(2) Remedy

[31] The Adjudicator, in the current case, ordered the following remedies:

> …I order the employer, Shaw Communications Inc., to forthwith compensate Ms. Amer for all loss of salary, including bonuses, benefits, and interest from April 17, 2016 to the date she commenced her new employment, as well as severance pay pursuant to s. 235 of the *Canada Labour Code*, *supra*, and interest on that amount, less statutory deductions, and for costs on a full indemnity basis.

[32] She also noted in her Decision:

> Further, rather than having summarily dismissed Ms. Amer without notice or wages in lieu of notice and severance pay, Shaw could have issued Ms. Amer a "working notice," wherein she could have continued working as a TSR for a specified period of time, e.g. two or three months, after which her employment would end, in order to provide her with time to adjust and seek other employment while still receiving her usual income.

[33] It is the Respondent's position that the remedies ordered reflect the Adjudicator's broad powers, pursuant to section 242(4) of the *Code*. Costs can be an important tool to counteract the consequences of unjust dismissal by ensuring that the financial compensation awarded by the Adjudicator is not reduced by the need to pay legal fees. As it relates to the severance pay ordered, it was within the Adjudicator's power to award an amount equal to what could have been ordered directly under section 235 of the *Code*, pursuant to section 242(4)(c). Further, the

Applicant allegedly failed to meet its onus of proving the Respondent's mitigation efforts were unreasonable and therefore, there is no basis to the Applicant's argument on the issue of mitigation.

[34] I find that the Adjudicator erred in granting the above remedies on the two bases below:

A. The Adjudicator awarded substantial indemnity costs which were not justified by the reasons; and

B. By ordering compensation for loss of salary and severance pay, the Adjudicator awarded duplicative remedies.

[35] Remedial discretion under the *Code* is broad, including open-ended equitable relief (*Wilson*, above at para 63). If the Adjudicator determines a dismissal is unjust, it has broad authority to grant an appropriate remedy, pursuant to section 242(4) of the *Code*, including requiring the employer to:

> **(a)** pay the person compensation not exceeding the amount of money that is equivalent to the remuneration that would, but for the dismissal, have been paid by the employer to the person;
>
> **(b)** reinstate the person in his employ; and
>
> **(c)** do any other think that is equitable to require the employer to do in in order to remedy or counteract any consequences of the dismissal.
>
> (*Wilson* at para 6; *Code*, s 242(4))

[36] Despite this breadth, I do not find that the outcome, as it relates to the remedies, is reasonably justified (*Vavilov* at paras 86-87). Specifically, the Adjudicator did not provide

reasons to substantiate the costs awarded on a full indemnity basis, nor the award for compensation for loss of salary in conjunction with severance pay.

[37] The Decision demonstrates a degree of internal inconsistency in providing reasons that explain why the facts of the case fail to establish an award for aggravated and/or punitive damages and by expressly finding there was no bad faith on the part of the Applicant, while still awarding indemnity costs (*Bank of Nova Scotia v Randhawa*, 2018 FC 487 at paras 60-63 [*Randhawa*]):

> [60] There are two guiding principles in regard to the award of costs on a solicitor-client basis. First, as stated by the Supreme Court of Canada in *Young v Young*, 1993 CanLII 34 (SCC), [1993] 4 SCR 3 at p 134: "Solicitor-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties."…
>
> [61] The second guiding principle is that where such extraordinary awards are made, the decision-maker must explain the basis for doing so under the principles established in *Lee-Shanok*, and the failure to offer such an explanation can constitute a reversible error…
>
> [62] I find that while the Adjudicator had the jurisdiction to award costs, including solicitor-client costs, his failure to explain the basis for making such an extraordinary award renders this aspect of the award unreasonable. This is precisely the type of situation where the absence of reasons is fatal, because I am left to speculate as to why the Adjudicator made such an award (*Newfoundland Nurses; Leahy v Canada (Citizenship and Immigration)*, 2012 FCA 227 at para 121).
>
> [63] This is even more perplexing in light of the Adjudicator's rejection of the Respondent's claim for aggravated and punitive damages, as explained at para 113 of his decision…

[38] It is possible to undertake a reasonableness review in the absence of reasons, which I find to be the case here:

> [138] There will nonetheless be situations in which no reasons have been provided and neither the record nor the larger context sheds light on the basis for the decision. In such a case, the reviewing court must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable. But it is perhaps inevitable that without reasons, the analysis will then focus on the outcome rather than on the decision maker's reasoning process. This does not mean that reasonableness review is less robust in such circumstances, only that it takes a different shape.
>
> (*Vavilov* at para 138)

[39] I agree with the Applicant that there is also a concern with double recovery, which renders the Decision unreasonable. As found by the Supreme Court in *Wilson* at paragraph 47:

> [47] The effect of the 1978 amendments was to limit the applicability of the notice requirements in s. 230(1) and the minimum severance provisions in s. 235(1) to circumstances that fell outside the Unjust Dismissal provisions. The notice and severance pay requirements under ss. 230(1) and 235(1), for example, apply to managers, those who are laid off due to lack of work or discontinuance of a function, and, in the case of s. 230(1), employees who have worked for the employer for more than 3 consecutive months but less than 12 months. In other words, ss. 230(1) and 235(1) are not an alternative to the Unjust Dismissal provisions in ss. 240 to 246, they apply only to those who do not or cannot avail themselves of those provisions: *Redlon Agencies*, at paras. 38-39; *Wolf* Lake First Nation v. Young (1997), 1997 CanLII 5057 (FC), 130 F.T.R. 115, at para. 50.

[40] As such, the Respondent chose to avail herself of the unjust dismissal provisions of the *Code*. In this respect, the Adjudicator's order in relation to section 235 of the *Code* and her comments in relation to the "working notice" which could have been provided to the Respondent are problematic. While I am not prepared to find that in substance these remedies fall outside

section 242(4)(c) equitable *Code* remedies, they unreasonably suggest alternatives to the unjust dismissal regime in the context of the current Decision, and no reasons are offered to ground these remedies in section 242(4)(c) of the *Code*.

[41] On the issue of mitigation, I find that the Adjudicator provided fulsome reasons and I have not been pointed to an error that would render the Decision unreasonable in this respect. The Applicant relies on job listings it suggests supports that call centre jobs were plentiful, and questions that the Respondent only made a couple of applications to call centers. The Respondent was looking for medical centre jobs, which allegedly extended her search. I find the Applicant's requests on this front amounts to asking this Court to re-weigh the factual evidence before the Adjudicator.

[42] I do not find this to be a case where the remedies awarded can stand in light of the record, specifically in relation to the indemnity costs award, compensation for continual loss of salary and severance pay. As such, the Decision in relation to the ordered remedies, other than as it relates to the issue of mitigation, is unreasonable.

C. *Was there a denial of procedural fairness in that the Applicant was denied an opportunity to lead evidence or make submissions on determining issues or in that the Adjudicator was biased?*

(1) The opportunity to lead evidence and make submissions

[43] I agree with the Applicant that the adjudication of whether a dismissal was unjust involves significant interests and an expectation of a relatively formal hearing and adversarial

process (*Randhawa*, above at para 44). I also agree that the following two requirements are engaged: that the adjudicator will be unbiased and that the parties will be given adequate notice and opportunity to be heard:

> It is important to note at the outset that the appellant's arguments raise issues with respect to two important and distinct rules of natural justice. It has often been said that these rules can be separated into two categories, namely "that an adjudicator be disinterested and unbiased (*nemo judex in causa sua*) and that the parties will be given adequate notice and opportunity to be heard (*audi alteram partem*)"…
>
> (*Iwa v Consolidated-Bathurst Packaging Ltd*, [1990] 1 SCR 282 at 322)

[44] The parties must have a reasonable opportunity to respond to any new ground on which they have not made representations. In this respect, I agree the parties should have been made aware that the scope of the core duties of the TSR role and the statistical evidentiary basis relied upon by the Applicant to demonstrate the Respondent had consistently failed to meet her targets was in issue. These concerns were not put in issue by the parties, but nevertheless formed the basis upon which the Adjudicator found there was no culminating incident, owing to the lack of a complete and accurate representation of the Respondent's performance, thereby allowing her to conclude the dismissal of the Respondent was unjust.

[45] The Adjudicator considered the numerical/statistical bases that the Applicant had used to assess the Respondent's performance in several *italicized* portions of her Decision. She made findings to the effect that, for example, as it relates to the survey results, that "[t]he evidence did not establish the reliability of the survey results…"

[46] In relation to the Documentation targets, the Adjudicator further found:

> … The evidence did not establish that the person who determined that there was no documentation on 4 of her accounts on March 2, 2016 had checked only the notes on the account, or whether that person had looked for a memo on the account within the system.

[47] In relation to the number of call audited, for example, the Adjudicator found:

> The evidence did not establish that Mr. Waseem [second supervisor] had audited more than two of Ms. Amer's calls per week… Ms. Amer was not informed that she could question how her figures or "stats" were arrived at, and question whether any surveys or samples of her calls were representative of her calls and her performance as a whole.

[48] The parties did not dispute the core duties involved in the TSR role, nor the sufficiency of the statistical evidence led. In this respect, the Adjudicator "shifted the focus" in this case. The parties were not given adequate notice, nor were they provided with an opportunity to be heard on what turned out to be determinative issues.

[49] I have already found that the Decision in relation to the ordered remedies, other than the issue of mitigation, is unreasonable and it is unnecessary to address the question of notice in this respect.

(2) Bias

[50] The Applicant alleges that bias was demonstrated by the Adjudicator's abrupt interruption shortly into the cross-examination of the Respondent, where counsel for the Applicant was told to "tone it down". No objection was made by the Respondent's counsel in

this regard. The Adjudicator also allegedly repeatedly went out of her way to decide uncontested issues against the Applicant. The Applicant further argues that the Adjudicator also awarded substantial indemnity costs without a finding that the Respondent had acted in bad faith.

[51] The test for bias is whether an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that the decision maker, consciously or unconsciously, would not decide fairly (*Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369 at 394).

[52] I do not find this threshold has been met in this case. The length and detail of the Decision shows a thorough consideration of the evidence before the Adjudicator. Further, it does not follow from a single incident of being told to "tone it down", that the Adjudicator would decide unfairly against the Applicant.

V. Conclusion

[53] For the reasons above, I grant this application in part and remit the Decision to a different Adjudicator for redetermination. I dismiss the application on the issues of bias and mitigation.

[54] I award costs to the Applicant in the fixed amount of $25,000, inclusive of taxes. The Applicant's bill of costs, filed with this Court, was reduced in the discretion of this Court to exclude costs related to the filing of the amended application and those associated with the pre-hearing procedures, specifically related to the case management conference.

JUDGMENT in T-1880-18

THIS COURT'S JUDGMENT is that:

1. The application is granted in part and remitted to a different Adjudicator for redetermination;
2. The application is dismissed on the issues of bias and mitigation alone; and
3. Costs to the Applicant in the fixed amount of $25,000, inclusive of tax.

"Michael D. Manson"

Judge

ANNEX A

Sections 240(1), 241(1), 242(4) of the *Code*:

Unjust Dismissal

Complaint to inspector for unjust dismissal

240 (1) Subject to subsections (2) and 242(3.1), any person

(a) who has completed twelve consecutive months of continuous employment by an employer, and

(b) who is not a member of a group of employees subject to a collective agreement,

may make a complaint in writing to an inspector if the employee has been dismissed and considers the dismissal to be unjust.

Congédiement injuste

Plainte

240 (1) Sous réserve des paragraphes (2) et 242(3.1), toute personne qui se croit injustement congédiée peut déposer une plainte écrite auprès d'un inspecteur si :

a) d'une part, elle travaille sans interruption depuis au moins douze mois pour le même employeur;

b) d'autre part, elle ne fait pas partie d'un groupe d'employés régis par une convention collective.

Reasons for dismissal

241 (1) Where an employer dismisses a person described in subsection 240(1), the person who was dismissed or any inspector may make a request in writing to the employer to provide a written statement giving the reasons for the dismissal, and any employer who receives such a request shall provide the person who made the request with such a statement within fifteen days after the request is made.

Motifs du congédiement

241 (1) La personne congédiée visée au paragraphe 240(1) ou tout inspecteur peut demander par écrit à l'employeur de lui faire connaître les motifs du congédiement; le cas échéant, l'employeur est tenu de lui fournir une déclaration écrite à cet effet dans les quinze jours qui suivent la demande.

Unjust dismissal

242 (4) If the Board decides under subsection (3) that a person has been unjustly dismissed, the Board may, by order, require the employer who dismissed the person to

(a) pay the person compensation not exceeding the amount of money that is equivalent to the remuneration that would,

Cas de congédiement injuste

(4) S'il décide que le congédiement était injuste, le Conseil peut, par ordonnance, enjoindre à l'employeur :

a) de payer au plaignant une indemnité équivalant, au maximum, au salaire qu'il aurait normalement gagné s'il n'avait pas été congédié;

but for the dismissal, have been paid by the employer to the person;

(b) reinstate the person in his employ; and

(c) do any other like thing that it is equitable to require the employer to do in order to remedy or counteract any consequence of the dismissal.

b) de réintégrer le plaignant dans son emploi;

c) de prendre toute autre mesure qu’il juge équitable de lui imposer et de nature à contrebalancer les effets du congédiement ou à y remédier.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1880-18
STYLE OF CAUSE:	SHAW COMMUNICATIONS CANADA INC v CHRISTINE AMER
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 22, 2020
JUDGMENT AND REASONS:	MANSON J.
DATED:	NOVEMBER 2, 2020

APPEARANCES:

Howard Levitt Maxwell Radway	FOR THE APPLICANT
Wesley Jamieson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEVITT LLP Toronto, Ontario	FOR THE APPLICANT
ROSS & MCBRIDE LLP Hamilton, Ontario	FOR THE RESPONDENT