

Federal Court



Cour fédérale

Date: 20230119

Docket: T-97-22

Citation: 2023 FC 90

Ottawa, Ontario, January 19, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

DANIEL BAOUYA

Applicant

and

**CANADIAN TRANSPORTATION
ACCIDENT INVESTIGATION AND
SAFETY BOARD**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Daniel Baouya, unsuccessfully grieved the termination of his probationary employment from the Canadian Transportation Accident Investigation and Safety Board [TSB]. He seeks judicial review of the third level grievance decision of December 21, 2021 [Decision] and claims that breaches of procedural fairness resulted in an unreasonable decision.

[2] For the reasons that follow, despite Mr. Baouya's position that he was never in an "actual" conflict of interest and that the TSB has failed to disclose documents, I have concluded there was no breach of procedural fairness. Further, I have concluded the Decision is reasonable.

I. Background

[3] On October 13, 2020, Mr. Baouya was hired by the TSB as Manager, Regional Operations – Pacific – Air, responsible for conducting investigations into transportation occurrences in the Pacific region. His employment was subject to a standard 12-month probationary period.

[4] The job positing for this position states:

The TSB was created as an independent agency due to the importance of impartiality in the conduct of investigations. It is fundamental to the achievement of the TSB's mandate for employees to be free from real, apparent or potential conflicts of interest in the conduct of day to day operations. As such, and in accordance with the TSB *Code of Values and Ethics*, the successful candidate in this selection process cannot directly own an interest (shares or other) in a company involved in the air, marine, rail, or pipeline industry. Other personal activities relating to these industries may also represent a conflict of interest. Should you have concerns in regards to your candidacy or any real, apparent or potential conflicts of interest, you are strongly encouraged to raise them as early in the process as possible.

[5] The TSB *Code of Values and Ethics* at section 8.14.1 states as follows on Outside Activities as conflicts of interest:

You must avoid and prevent situations that could give rise to a real, apparent, or potential conflict of interest. You must report to your manager all circumstances that may place you in a situation of real, apparent, or potential conflict of interest. If you are unsure

or do not know if your actions, activities, or situation constitutes, or could appear to constitute, a conflict of interest, ask or report it to your manager in writing by submitting a confidential report.

[6] Prior to his employment with the TSB, Mr. Baouya was employed in the Canadian Armed Forces. He was released from service in September 2018.

[7] He then worked as a pilot with WestJet Encore [WestJet]. In May 2020, due to COVID-19, WestJet put Mr. Baouya on furlough (temporary suspension due to economic conditions). In June 2021, Mr. Baouya participated in a Pilot Recall bid with WestJet and was awarded a First Officer position to resume flying with WestJet. Mr. Baouya sought an extension to his Military Personal Leave of Absence with WestJet, which was denied. Mr. Baouya then resigned from WestJet, effective July 5, 2021.

[8] In late June 2021, which was still during his probationary period with the TSB, Mr. Baouya's TSB supervisor [the Director] received an anonymous complaint that Mr. Baouya was still an employee of WestJet, one of the airlines under the TSB's investigatory jurisdiction.

[9] This complaint resulted in the Director conducting an administrative investigation. The Director provided Mr. Baouya with a notice of the administrative investigation by letter on July 9, 2021. The letter states:

... an administrative investigation will be conducted into your employment relationship with WestJet Encore while employed at the Transportation Safety Board of Canada, including your continued compliance with the Values and Ethics Code for the Public Sector, as well as the TSB Code of Values and Ethics – which are terms and conditions of your employment.

The letter also informed Mr. Baouya that a meeting would be scheduled where he would “be afforded an opportunity to present any clarifications or extenuating circumstances that [he felt] should be addressed or considered in the course of the investigation or that need to be taken into consideration.”

[10] On July 14, 2021, Mr. Baouya was provided copies of the emails the TSB received from WestJet, noting that he participated in a Pilot Recall bid with WestJet in June 2021, maintained flight benefits until February 2021, and received the Canada Emergency Wage Subsidy for the entirety of his furlough. Mr. Baouya was advised the WestJet emails would be discussed at the administrative investigation hearing.

[11] On July 21, 2021, the administrative investigation concluded Mr. Baouya should have disclosed his relationship with WestJet, as required by the TSB *Code of Values and Ethics*. The Director determined Mr. Baouya was not forthright or transparent about his ongoing relationship with WestJet, therefore Rejection on Probation [ROP] was deemed appropriate.

[12] Mr. Baouya grieved the ROP decision on the grounds he was not provided with a copy of the allegations the administrative investigation was based upon prior to his termination. He requested “copies of any and all written submissions or any other materials prepared by or for the employer that will be part of the record and considered by [the decision-maker],” before the hearing of the grievance.

[13] The TSB Senior Labour Relations Advisor [Labour Advisor] informed Mr. Baouya he would have to submit an Access to Information and Privacy [ATIP] request for the documents.

[14] Mr. Baouya made the ATIP request and obtained approximately 132 pages of documents.

[15] The grievance process proceeded directly to the third level when Mr. Baouya opted to go this route, rather than have the grievance reviewed by the Director, who made the ROP decision.

A. *Decision Under Review*

[16] In support of his grievance, Mr. Baouya argued he had disclosed his relationship with WestJet several times and he was never in a real conflict, as he had not been involved in a WestJet occurrence. He also alleged he was denied procedural fairness, as the specific complaint that led to the investigation had not been communicated to him. Mr. Baouya argued the TSB should have been proactive in inquiring about any conflicts he might have had. He also argued he had disclosed his relationship with WestJet on five occasions.

[17] The third level grievance hearing was held on November 30, 2021. Mr. Baouya was represented by legal counsel at this hearing. One of the issues raised by Mr. Baouya's counsel was that he had not received an unredacted copy of the Third Level Grievance Précis – *Termination of Employment During Probation* [Précis] before the hearing.

[18] Mr. André Lapointe [Lapointe], the TSB Chief Operating Officer, concluded there was no breach of procedural fairness in the investigative process. The Director informed Mr. Baouya on

July 9, 2021 that an administrative investigation into his employment with WestJet would be conducted. Additionally, prior to the investigation interview, Mr. Baouya was provided with several emails and was informed the emails would be discussed at the interview.

[19] Lapointe concluded the ROP was reasonable on objective and demonstrable grounds.

Lapointe determined the Director had found Mr. Baouya:

... demonstrated difficulties in exercising sound judgement and recognizing [his] obligations under both the *TSB Code of Values and Ethics* and the *Values and Ethics Code for the Public Sector*. As a result, [the Director] concluded that this seriously impaired [Mr. Baouya's] ability to perform the duties of the position of Manager, Regional Operations – Pacific – Air, which require the highest level of judgement and ethical standards.

[20] Lapointe, as the final level decision-maker, denied the grievance.

B. *Preliminary Issue*

[21] I agree with the Respondent the style of cause should be amended. Mr. Baouya did not make any submissions on this issue.

[22] The TSB should be identified by its legal name, “The Canadian Transportation Accident Investigation and Safety Board.” Further, it is not necessary to name the Attorney General as a Respondent, as the TSB is a body corporate that can be named directly in legal proceedings (*Federal Courts Rules*, SOR/98-106 at r 303(2) [*Rules*]; *Canadian Transportation Accident Investigation and Safety Board Act*, SC 1989, c 3, ss 11(4)).

[23] Likewise, it is not appropriate to name Mr. André Lapointe as a Respondent, since individuals making administrative decisions are not proper parties on judicial review (*Rules*, r 03(1)(a); *Canada (Attorney General) v Zalusky*, 2020 FCA 81 at para 22).

[24] The style of cause is hereby amended to name “The Canadian Transportation Accident Investigation and Safety Board” as the sole Respondent.

II. Issues

[25] Although the issues raised by Mr. Baouya overlap in some respects, I will address them as follows:

- A. Was there a Breach of Procedural Fairness?
 - (i) Documentary Disclosure
 - (ii) Prior Involvement of Lapointe
- B. Does the Presumption of Innocence Apply?
- C. Is the Decision Reasonable?

III. Standard of Review

[26] The parties agree on the applicable standards of review for the issues raised by Mr. Baouya.

[27] In assessing the procedural fairness arguments, the Court must consider if the grievance procedure was fair, having regard to all of the circumstances and the factors outlined in *Baker v*

Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817 [*Baker*] (see *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69 at para 46, citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[28] The standard of review for the Decision itself is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). The Court will only intervene if the Decision is lacking in justification, intelligibility, and transparency. The Court considers the decision-maker's reasoning process and the outcome (*Vavilov* at para 83). A "reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

IV. Analysis

A. *Was there a Breach of Procedural Fairness?*

[29] Mr. Baouya argues the Decision to terminate his employment attracts a high level of procedural fairness. He argues his termination was a disguised disciplinary action as the result of complaints from co-workers who did not like his management style. Mr. Baouya claims Lapointe had information that had not been provided to him, so he did not know the case he had to meet.

[30] While this is a judicial review of the final level Decision only, to the extent that Mr. Baouya argues the entire process leading to the Decision was tainted, I will consider the steps taken in the administrative investigation stage.

[31] There are two aspects to Mr. Baouya's arguments that he did not have a fair process: (1) inadequate documentary disclosure; and (2) the final decision-maker (Lapointe) was in a conflict of interest due to his prior involvement in the administrative investigation.

(i) Documentary Disclosure

[32] Mr. Baouya argues the TSB failed to ensure that he received a complete and unredacted copy of the materials. He received redacted versions of key materials following an ATIP request, as the Labour Advisor would not provide any documentation to him directly. The Labour Advisor also refused requests to provide unredacted copies of the documents or confirm if other materials were before Lapointe.

[33] Mr. Baouya's position is that, as a matter of procedural fairness, he was entitled to all of the documents that Lapointe may have referenced or considered.

[34] While Mr. Baouya relies upon the decision in *Kane v Bd of Governors of UBC*, [1980] 1 SCR 1105 [*Kane*] to support this proposition, on my reading of *Kane*, that is not the principle for which the case stands. The situation in *Kane* is different as it concerns a tribunal receiving further evidence following the conclusion of the hearing in the absence of one of the parties.

[35] More on point is the decision in *Nicholson v Haldimand-Norfolk Regional Police Commissioners*, [1979] 1 SCR 311 [*Nicholson*], where the Supreme Court held that a probationary employee is not owed the same level of procedural fairness as an indeterminate employee. As Chief Justice Laskin stated, "although the appellant clearly cannot claim the

procedural protections afforded to a constable with more than eighteen months' service, he cannot be denied any protection. He should be treated "fairly" not arbitrarily" (at 324).

[36] Further, in *De Santis v Canada (Attorney General)*, 2020 FC 723 at paragraph 28 [*De Santis*], Justice Fothergill affirmed "[t]he level of procedural fairness owed to an employee in an internal grievance process is at the low end of the spectrum." An internal grievance process will be procedurally fair so long as the employee is informed of any prejudicial facts against them and they are provided with an opportunity to respond (at para 28). Justice Fothergill further held the applicant/employee "had the right to be informed of the facts against him, not to be given access to all information in the decision maker's possession" in relation to a promotion grievance, as the "grievance process is intended to be informal and non-adversarial" (at para 30).

[37] It is undisputed that Mr. Baouya was entitled to know the facts upon which his probationary employment was being terminated. In this regard, on July 9, 2021, he was advised an administrative investigation was being conducted into his employment relationship with WestJet while also being employed at the TSB. The investigation was prompted by his relationship with WestJet.

[38] In these circumstances, I am not satisfied that Mr. Baouya was entitled to every document in the possession of the TSB in relation to his employment. A procedurally fair process requires that he be made aware of the "case against" his continued employment at TSB. In that regard, he knew the TSB was investigating him in relation to his continued employment with WestJet.

[39] Mr. Baouya alleges that upon reviewing the Certified Tribunal Record, a large volume of materials were before Lapointe and used during the grievance process that were not disclosed to him prior to the hearing. In particular, he points to the Précis and the fact that Lapointe had an unredacted version, whereas the copy disclosed to him was redacted. On cross-examination, Lapointe explained that such documents are not normally shared with the person bringing a grievance.

[40] Mr. Baouya did have the ROP decision, the Director's Administrative Investigation Report, and a redacted Précis. Mr. Baouya was aware of the primary issue underlying his ROP being his lack of judgment, demonstrated by the non-disclosure of his ongoing relationship with WestJet.

[41] Mr. Baouya has not convinced me the outcome of the grievance process would have been any different if he had access to the unredacted material in the Précis. He has not pointed to any facts or evidence in the unredacted Précis (which he received in the Certified Tribunal Record) that he would have responded to or addressed if he had access to the document. The key allegations against him, namely his failure to disclose his ongoing relationship with WestJet, were addressed in his submissions in the third level grievance.

[42] The overriding fact remains that Mr. Baouya did not disclose his relationship with WestJet. Although he claims to have disclosed that he was on furlough with WestJet on five occasions, four times in the application process and the fifth time in seeking clarification on a training opportunity, he did not make a conflict of interest disclosure in the format required by

his employer. Specifically, he did not submit a confidential report in writing to the Director General, Corporate Services, with a detailed description of his activities or position with WestJet as required by the TSB *Code of Values and Ethics* and the *Procedures - Conflict of Interest*.

[43] As a final point, the existence of complaints from co-workers relating to his management style or personality did not form grounds for his dismissal. The Administrative Investigation report states the objectives and scope of the investigation were to:

[d]etermine the extent of Daniel Baouya's employment relationship with Westjet Encore (WJE) during his employment with the Transportation Safety Board of Canada (TSB), and whether such relationship was consistent with the Values and Ethics Code for the Public Sector, as well as the TSB Code of Values and Ethics (the Codes).

The report focuses exclusively on the conflict of interest with WestJet and does not mention any other complaints about Mr. Baouya's conduct or behaviours that the TSB may have received.

[44] Overall, I am satisfied Mr. Baouya had adequate documentary disclosure of the information relied upon by the TSB in reaching the Decision. No procedural fairness issues arise on the issue of documentary disclosure.

(ii) Prior Involvement of Lapointe

[45] Mr. Baouya argues the decision-maker, Lapointe, was involved throughout all levels of the grievance process, thus putting him in a conflict of interest. He submits Lapointe's involvement in the administrative investigation and initial ROP decision calls into question his ability to act as the final level decision-maker in the grievance process. Mr. Baouya claims

Lapointe made a number of admissions, under cross-examination, with respect to his involvement with the investigation prior to the ROP decision such as:

- a) The TSB provided Mr. Baouya with 18 pages of additional productions which were not originally part of the Certified Tribunal Record, consisting of a series of emails exchanged between Lapointe and other members of the TSB, related to Mr. Baouya;
- b) In July 2021, Lapointe was aware of the allegations of wrongdoing made against Mr. Baouya and was aware that an administrative investigation had been started in relation to the allegations;
- c) In July 2021, Lapointe had been provided with copies of documents received from the TSB by outside parties in relation to the allegations of wrongdoing made against Mr. Baouya;
- d) During July 2021, Lapointe met with the Director on more than one occasion in relation to the allegations that had been made against Mr. Baouya and the Director shared the draft ROP decision (to terminate Mr. Baouya) with Lapointe;
- e) Lapointe had one or two face-to-face meetings and telephone calls with the Director in July 2021 relating to Mr. Baouya; and
- f) Lapointe is the senior person at the TSB who was involved in the process of the investigation into the allegations made against Mr. Baouya.

[46] Mr. Baouya relies upon these points to establish that Lapointe was informed of the investigation. However, in his Affidavit, Lapointe states he was not the person who decided to

undertake the administrative investigation, and he did not make the decision to reject Mr. Baouya's probation, or determine the grounds for the ROP decision.

[47] The Respondent argues that it was appropriate for Lapointe to be advised on a human resources [HR] issue. Lapointe testified on cross-examination that as the TSB is a small organization, it was not uncommon for him to be briefed on HR issues. Lapointe explained that his meetings with the Director were to bring the allegations to his attention and inform him of the Director's intention to launch an administrative investigation. Lapointe explains that he suggested that the Director provide any draft documents to the TSB's legal team for their review.

[48] I accept that these are typical HR steps taken in an organization, and Lapointe's involvement early on was appropriate considering his position and the size of the organization.

[49] Additionally, Mr. Baouya has not demonstrated how a senior official providing advice on communicating a decision is equivalent to making the decision. Lapointe explained that any suggestions he gave on the draft ROP decision were limited to identifying the formal feedback provided and removing unnecessary commentary.

[50] In my view, the involvement of Lapointe, when considering the TSB's operational context, was reasonable and does not amount to a conflict of interest. Lapointe's prior involvement was a consequence of both Mr. Baouya and Lapointe's positions at the TSB. Mr. Baouya was a manager. There were a limited number of senior managers at the TSB who could have heard Mr. Baouya's grievance complaint. Mr. Baouya has not pointed to any

information Lapointe had because of his prior involvement, in an HR capacity, that might have affected the outcome of the Decision.

[51] Mr. Baouya relies upon *Kane* for two propositions: first, that “[a] high standard of justice is required when the right to continue in one's profession or employment is at stake” (at 1113); and second, that proof of actual prejudice is not required, as the court is concerned with the possibility or likelihood of prejudice to a reasonable person (at 1116).

[52] Based upon my reading, the *Kane* decision is of limited relevance to the facts of this case. Although *Kane* addresses the principles of natural justice in the employment context, *Kane* concerned disciplinary action taken against a tenured professor. Mr. Baouya, by contrast, was a probationary employee. In any event, the natural justice principles discussed in *Kane* are the same principles reiterated in *Baker*.

[53] With respect to bias of the decision maker, the recent decision of Justice Aylen in *Deliva v Canada (Attorney General)*, 2022 FC 693 is helpful. Justice Aylen states at paragraphs 60 and 61:

... [A]s this Court stated in *Zhou v Canada (Citizenship and Immigration)*, 2020 FC 633 at paragraph 39, the burden is on the party alleging a reasonable apprehension of bias (actual or perceived) to show that a reasonable and informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that it is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide the matter fairly. In the absence of such evidence, members of administrative tribunals, like judges, are presumed to have acted fairly and impartially. The threshold for a finding of bias is therefore high and mere suspicion is insufficient to meet that threshold [see *Sagkeeng First Nation v Canada (Attorney*

General), 2015 FC 1113 at para 105; *Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369].

An allegation of reasonable apprehension of bias must be supported by material evidence demonstrating conduct that derogates from the standard. It cannot rest on mere suspicion, insinuations or mere impressions of a party or their counsel [see *Arthur v Canada (Attorney General)*, 2001 FCA 223 at para 8; *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 809 at para 11; *Maxim v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1029 at para 30].

[54] Mr. Baouya has simply not produced material evidence to convince me that he did not have a fair grievance process. Mr. Baouya was provided with notice of the grievance hearing, the key documents that were before Lapointe, and an opportunity to respond to the allegations against him at the grievance hearing. In the circumstances, I find the grievance process was fair.

B. *Does the Presumption of Innocence Apply?*

[55] Mr. Baouya argues Lapointe failed to apply the presumption of innocence to his circumstances. He asserts his dismissal was based on anonymous complaints and a perceived conflict of interest. Mr. Baouya says that Lapointe's statement in cross-examination that there was "an actual conflict of interest" demonstrates that he was not afforded the presumption of innocence, as, in Mr. Baouya's opinion, there was no such conflict of interest. In support he relies upon *Doré v Barreau du Québec*, 2012 SCC 12 [*Doré*] at paragraph 24 to argue that administrative decision-makers must act consistently with the values articulated in the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*].

[56] On this point, the Federal Court of Appeal held in *Chaudhry v Canada (Attorney General)*, 2008 FCA 61 at paragraph 6 that the presumption of innocence in section 11 of the *Charter* only applies to those “charged with an offence”. The issue here is a grievance process relating to a ROP decision. Further, *Doré* dealt with the *Charter* value of freedom of expression in the context of disciplinary proceedings for a lawyer, by a law society, and is therefore factually distinguishable.

[57] While I agree an administrative decision-maker must act in accordance with *Charter* values, the presumption of innocence does not apply to these circumstances, and Mr. Baouya has not demonstrated a breach of any *Charter* values in this matter.

C. *Is the Decision Reasonable?*

[58] Mr. Baouya argues the Decision is unreasonable on a number of grounds, including that the Decision fails to reference certain evidence and facts.

[59] Mr. Baouya claims that he disclosed his employment relationship with WestJet on five separate occasions, prior to the administrative investigation. The Decision does not address any of these five purported disclosures regarding Mr. Baouya’s ongoing employment with WestJet.

[60] Mr. Baouya has not produced any evidence that the five claimed disclosures of the potential conflict with WestJet were done in accordance with the process outlines in the TSB’s *Procedures - Conflict of Interest*. He has not produced any reports he submitted to the Director General, Corporate Services outlining his WestJet relationship.

[61] In that regard, the fifth instance Mr. Baouya alleges he disclosed his employment relationship with WestJet is the closest to meeting the conflict of interest reporting requirements under the *Code of Values and Ethics*. In an email to the Director General, Corporate Services dated October 28, 2020, Mr. Baouya refers to WestJet as a “former employer”, rather than a current one. Although this email is not specifically referenced in the Decision, in my view, it was not necessary to do so as it was clear from the relevant timelines that Mr. Baouya mischaracterized the ongoing relationship with WestJet. He did not resign from WestJet until July 5, 2021, which was over seven months after his email was sent.

[62] Mr. Baouya also draws the distinction between a real and a perceived conflict of interest. He argues that he was never in a “real” conflict of interest. This argument is without merit, as the TSB *Code of Values and Ethics* and the *Values and Ethics Code for the Public Service* do not distinguish between a real, an apparent, or a potential conflict; all three must be avoided by TSB employees and all three must be reported to the employer.

[63] The Decision states Mr. Baouya “demonstrated difficulties in exercising sound judgement and recognizing [his] obligations under both the TSB *Code of Values and Ethics* and the *Values and Ethics Code for the Public Sector*”. The Decision does rely upon a specific incident of a conflict of interest.

[64] The fact Mr. Baouya resigned from WestJet prior to receiving notice of the administrative investigation does not alter the fact that he was in a perceived conflict of interest at the time of

accepting employment with the TSB and for the following eight months. He resigned from WestJet effective four days prior to receiving notice of the administrative investigation.

[65] While it may have been preferable for Lapointe to address Mr. Baouya's claims to have disclosed his ongoing WestJet relationship, the failure to do so does not render the Decision unreasonable.

[66] Similarly, while it would have been preferable for Lapointe to address the procedural fairness concerns raised by Mr. Baouya regarding documentary disclosure, the failure to do so does not render the Decision unreasonable. As discussed above, Mr. Baouya was not entitled to disclosure of every document in the TSB's possession and I have concluded there was no breach of procedural fairness. The issue of documentary disclosure does not render the Decision unreasonable.

[67] Finally, Mr. Baouya argues the Decision is unreasonable as it fails to reference the fact he had a positive performance review. As noted by the Federal Court of Appeal in *Canada (Attorney General) v Alexis*, 2021 FCA 216 at paragraph 10, "[i]n both the federal public sector and the private sector, employers are afforded considerable discretion to assess the suitability of probationary employees and there is minimal scope for review of their decisions." While the positive review and the completion of certain training might be relevant in other circumstances, in the context of rejection during probationary employment, they are irrelevant.

[68] In sum, the issues raised by Mr. Baouya do not address the core of the ROP decision and the Decision, which was his failure to comply with the conflict of interest reporting requirements, whether real or potential, as set by the TSB.

[69] The Decision is reasonable and there are no grounds for the Court to intervene.

V. Conclusion

[70] Although Mr. Baouya has raised numerous issues and argued that certain documents were not disclosed, in my view, this case comes down to a single issue: Mr. Baouya failed to disclose his ongoing WestJet relationship. This failure alone was a reasonable ground upon which to dismiss him as a probationary employee. He was afforded appropriate levels of procedural fairness throughout the grievance process. His claim to be entitled to a judicial form of procedural fairness in the context of his grievance process is inconsistent with the case law relevant to the probationary employment scenario.

[71] This judicial review is therefore dismissed.

VI. Costs

[72] As the successful party, the Respondent would normally be entitled to an award of costs. However, in my view, the Respondent's conduct in requiring Mr. Baouya to file an ATIP request to obtain documentary disclosure unnecessarily complicated and prolonged this matter. I therefore decline to award costs.

JUDGMENT IN T-97-22

THIS COURT'S JUDGMENT is that:

1. This judicial review is dismissed;
2. The style of cause is amended, with immediate effect, to name the Canadian Transportation Accident Investigation and Safety Board as the sole Respondent;
3. No costs are awarded.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-97-22

STYLE OF CAUSE: BAOUYA v CANADIAN TRANSPORTATION
ACCIDENT INVESTIGATION AND SAFETY BOARD

PLACE OF HEARING: OTTAWA, ON

DATE OF HEARING: NOVEMBER 22, 2022

JUDGMENT AND REASONS: MCDONALD J.

DATED: JANUARY 19, 2023

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