Federal Court  Cour fédérale

Date: 20230725

Docket: T-787-22

Citation: 2023 FC 1013

Ottawa, Ontario, July 25, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

TODD STOROZUK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Todd Storozuk is a member of the Royal Canadian Mounted Police [RCMP] who grieved a reassignment that initially was dismissed for being out of time [Initial Level Decision]. A final level grievance decision [Final Level Decision] upheld the Initial Level Decision. The Final Level Decision is the subject of this judicial review.

[2] The determinative issue in the Final Level Decision is the timing of when the Applicant learned or ought to have known that his reassignment was permanent.

[3] The sole issue before this Court is the reasonableness of the Final Level Decision: *Smith v Canada (Attorney General)*, 2021 FCA 73 at para 27.

[4] A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 99. The Applicant has the burden of establishing the decision was unreasonable: *Vavilov*, above at para 100.

[5] For the reasons that follow, I am persuaded the Applicant has met his onus. I thus grant this judicial review application.

II. Additional Background

[6] Paragraph 31(2)(a) of *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [*RCMP Act*] stipulates that a grievance must be commenced within 30 days after the grievor knew or reasonably ought to have known of the grieved decision, act or omission resulting in the grievance. See Annex "A" below for relevant legislative provisions.

[7] The Federal Serious and Organized Crime Group [FSOC] unit of the RCMP is divided into Groups and each Group is subdivided into Teams. Groups 1-7 engage in investigative work

and Group 8 provides operational support. The Applicant worked in Group 5, Team 4 until a meeting on July 7, 2017 with his then superior, Inspector Rob Parker who informed the Applicant that he wanted the Applicant "out of the unit immediately." The Applicant moved to Group 8 on July 11, 2017.

[8] The Applicant understood the transfer to be an informal assignment rather than a formal transfer. He did not receive a formal notice of transfer, nor was the transfer recorded in RCMP's Human Resources Management Information System [HRMIS], except for one entry stating that he was transferred to Group 8 due to a "duty to accommodate."

[9] The Applicant was medically non-operational between July 2018 and October 2020. The medical status did not preclude him from some work, and so on October 9, 2018, he was reassigned to Group 5 as a member of the Clandestine Laboratory Enforcement and Response team.

[10] In the meantime, the Applicant was the subject of a harassment investigation that began toward the end of July 2017. The investigation concluded in 2019 with a finding that the Applicant had violated the RCMP's Code of Conduct. Although the decision noted initially that the Applicant had transferred to a different work location as a mitigating factor, the word "transferred" was crossed out in pen and replaced with the word "relocated."

[11] Deemed fit to resume operational duties in October 2020, the Applicant prepared to return to an operational role in Group 5. In December 2020, the Applicant noticed on two occasions he was not receiving overtime and call-out opportunities with Group 5.

[12] Consequently, the Applicant met with a superior, Inspector Arsenault, on December 22, 2020 who advised him that while the Applicant held a position in the organizational chart of Group 5, it was solely for administrative purposes and he was no longer a part of Group 5. In a follow up email the next day, Inspector Arsenault stated that, “I believe there would be a conflict and further workplace issues if you were to work directly with [Group 5].”

[13] Taking the position that no formal transfer had ever taken place and it was improper for his employer to advise him retroactively that he had been transferred permanently on July 7, 2017, the Applicant grieved on January 6, 2021. The grievance was based on harassment, improper continuing punishment, and improper reassignment resulting in denial of overtime opportunities.

[14] The initial level grievance adjudicator found that the Applicant learned his reassignment was permanent on July 7, 2017 because the Applicant indicated in his grievance that he first was reassigned then. The Applicant therefore failed to bring his grievance within the 30-day statutory time limit. The initial level adjudicator found that the Applicant had not presented new information that would put the matter in a whole new light and give rise to an expectation that the decision would be reconsidered on that basis. The adjudicator also determined that there were

no exceptional or extenuating circumstances constituting sufficient justification to warrant a retroactive extension of time.

[15] The issue before the final level grievance adjudicator [Grievance Adjudicator] was whether the Initial Level Decision was clearly unreasonable or based on an error of law: *Commissioner's Standing Orders (Grievances and Appeals),* SOR/2014-289, subsection 18(2). The Grievance Adjudicator confirmed the Initial Level Decision and dismissed the Applicant's grievance, finding that the Applicant's own submissions indicated he learned he was being moved out of the unit on July 7, 2017 and there was no evidence that of any intention that he would be reinstated in the unit. The Grievance Adjudicator also accepted the Respondent's assertion that the human resources system listed the Applicant as part of Group 5, Team 4 merely for administrative purposes.

III. Analysis

[16] Contrary to the Respondent's submission, I find that the Final Level Decision is silent about whether the July 7, 2017 meeting constituted a decision, act or omission for the purposes of paragraph 31(2)(a) of the *RCMP Act*. More to the point, there is no indication in the Grievance Adjudicator's reasons in my view that he turned his mind to it and whether the initial level adjudicator considered it.

[17] Although the Grievance Adjudicator concluded that the limitation period was triggered when the Applicant's supervisor declared on July 7, 2017 that he wanted him "out of the unit immediately," the reasons do not address why this statement during the meeting constitutes a

decision, act, or omission that triggered the limitation period, or whether the initial level adjudicator considered it, having acknowledged the applicable provision of the *RCMP Act*.

[18] I agree with the Applicant that at a minimum, the Grievance Adjudicator's reasons should have shown that he was alive to this question: *Vavilov,* above at para 120. For example, the Final Level Decision conveys an assumption that the declaration of the Applicant's superior is the "impugned decision" (at para 92). In the absence of an analysis that engages with paragraph 31(2)(a) of the *RCMP Act*, rather than just repeats it or makes a conclusory assumption, the Court cannot discern whether the Grievance Adjudicator in turn considered whether the initial level adjudicator "has properly justified its interpretation of the statute in light of the surrounding context": *Vavilov,* above at para 110.

[19] In my view, this amounts to more than a "minor misstep." It is a sufficiently central error which renders the decision unreasonable: *Vavilov,* above at para 100. The limitation period is a significant threshold issue which may prevent the Applicant's grievance from proceeding on the merits: *Horton v Canada (Attorney General),* 2004 FC 793 at paras 24-25.

[20] Further, for the reasons below, I am not persuaded by the Respondent's submission before this Court that the lack of documentation in the human resources system was not enough to overcome the other evidence of the transfer.

[21] The Applicant's submissions before the Grievance Adjudicator included various factors that led to his understanding that he still was part of Group 5, Team 4, including:

- On October 9, 2018, he returned to Group 5 after a temporary reassignment to Group 8 in the context of the harassment investigation;
- He remained listed in Group 5, Team 4 in internal staffing and human resources records;
- His reporting line remained with Group 5, Team 4;
- He acted as Group 5's representative for B.C. wildfires; and
- His accommodation documents were linked to Group 5.

[22] The Grievance Adjudicator's reasons do not grapple with these factors, except for the point about the Applicant's listing in Group 5, Team 4 in the human resources records, which the Grievance Adjudicator accepted was "merely for administrative purposes" but without explaining why. This amounts, in my view, to reviewable error.

[23] The Grievance Adjudicator is not expected to address every argument: *Vavilov,* above at para 128. His findings, however, regarding the import of the human resources records do not "add up," in my view, because they indicate a generalization which lacks justification: *Vavilov,* above at para 104. It is not enough for the Grievance Adjudicator to state simply that he accepts the Respondent's submission without a rational chain of analysis that allows the Court to connect the dots: *Vavilov,* above at para 97, citing *Komolafe v Canada (Minister of Citizenship and Immigration),* 2013 FC 431 at para 11. The lack of justification also, in my view, calls into question whether the Grievance Adjudicator was alive to all the factors listed by the Applicant that contributed to his understanding (or lack thereof) regarding the reassignment: *Vavilov,* above at para 128.

[24] With respect to the Applicant's argument that the Grievance Adjudicator failed to reference internal policies regarding transfers, while it may have been preferable for the Grievance Adjudicator to say more on this point, I am not persuaded that he was required to do so. Reasonableness is not about perfection; and the reasons must be read in light of the administrative regime and expertise of the Grievance Adjudicator: *Vavilov*, above at para 91.

IV. Remedy

[25] The Applicant requests that the Court decline to send this matter back for redetermination and instead declare that the Applicant's grievance was not time-barred and that the grievance proceed for determination on the merits. As I explain below, I decline to do so in the circumstances.

[26] By reason of section 18(1) of the *Federal Courts Act*, RSC 1985 c F-7, the Court has the discretion to grant a combination of relief in the nature of *certiorari* and *mandamus*, effectively quashing a decision and giving directions requiring a decision maker to reach a particular result: *Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206 at paras 54-55 [*Tennant*].

[27] Contrary to the Applicant's submissions, I am not convinced that this case is one where the Applicant has suffered from excessive delay, or that there is a particular inevitable outcome warranting such relief: *Vavilov*, above at para 142.

[28] I agree with the Respondent that the asserted delay in this file is not compelling. The Applicant filed his grievance in January 2021. The Initial Level Decision was rendered in August

2021. The final level grievance was filed by the Applicant in August 2021 and decided in March 2022. The hearing of this judicial review occurred in January 2023, less than a year later.

[29] The Applicant relies on *Giguère c Chambre des notaires du Québec*, 2004 SCC 1 (CanLII), [2004] 1 SCR 3 at para 34, where the Supreme Court of Canada quashed an administrative tribunal's decision but did not send it back for redetermination because it would have contributed to what was already an eight-year delay, among other things. This decision, in my view, is not of assistance to the Applicant because the timeline of his grievance does not approach the same length of delay, nor is there evidence that there has been any unreasonable or inordinate delay in his case: *Blencoe v British Columbia (Human Rights Commission),* 2000 SCC 44 (CanLII), [2000] 2 SCR 307 at para 121.

[30] The Court should refrain from quashing a decision and making a declaration where it would pertain solely to a finding of fact: *Makara v Canada (Attorney General),* 2017 FCA 189 at para 16; *Tennant,* above at para 63-65. As discussed above, the Grievance Adjudicator failed to analyze whether the July 7, 2017 meeting was or resulted in a decision, act or omission that triggered the 30-day time limit for the purposes of paragraph 31(2)(a) of the *RCMP Act* or whether the initial level adjudicator did so. It is not the Court's role on reasonableness review to provide this analysis in place of the decision-maker. The Court cannot know how the Grievance Adjudicator would have decided the case had it properly turned its mind to the statutory constraints. As a result, I believe it is appropriate to send the matter back for redetermination.

V. Conclusion

[31] For the above reasons, I therefore grant the Applicant's judicial review application. The Final Level Decision is set aside, with the matter to be redetermined by a different adjudicator.

[32] The parties agreed that the costs of this application should be $2,500. In my view, this is a proportionate amount in the circumstances. I thus exercise my discretion under Rule 400 of the *Federal Courts Rules*, SOR/98-106, and award the Applicant costs in the lump sum amount of $2,500, payable by the Respondent.

JUDGMENT in T-787-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is granted.
2. The Decision at the Final Level Timeliness (Reassignment) dated March 18, 2022 is set aside, with the matter to be redetermined by a different adjudicator.
3. The Respondent shall pay the Applicant's costs of $2,500.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Royal Canadian Mounted Police Act* (R.S.C., 1985, c. R-10)**
***Loi sur la Gendarmerie royale du Canada* (L.R.C. (1985), ch. R-10)**

Grievances	**Griefs**
Presentation of Grievances **Limitation period**	**Présentation des griefs** **Prescription**
31(2) A grievance under this Part must be presented	**31(2)** Un grief visé à la présente partie doit être présenté :
(a) at the initial level in the grievance process, within thirty days after the day on which the aggrieved member knew or reasonably ought to have known of the decision, act or omission giving rise to the grievance; and	**a)** au premier niveau de la procédure applicable aux griefs, dans les trente jours suivant celui où le membre qui a subi un préjudice a connu ou aurait normalement dû connaître la décision, l'acte ou l'omission donnant lieu au grief;
…	…

***Commissioner's Standing Orders (Grievances and Appeals)* (SOR/2014-289)**
***Consignes du commissaire (griefs et appels)* (DORS/2014-289)**

Grievances	**Griefs**
Decision **Considerations**	**Décision** **Éléments à considérer**
18(2) An adjudicator, when rendering the decision, must consider whether the decision at the initial level contravenes the principles of procedural fairness, is based on an error of law or is clearly unreasonable.	**18(2)** Lorsqu'il rend la décision, l'arbitre évalue si la décision de premier niveau contrevient aux principes d'équité procédurale, est entachée d'une erreur de droit ou est manifestement déraisonnable.

***Federal Courts Act* (R.S.C., 1985, c. F-7)**
***Loi sur les Cours fédérales* (L.R.C. (1985), ch. F-7)**

Jurisdiction of Federal Court **Extraordinary remedies, federal tribunals**	**Compétence de la Cour fédérale** **Recours extraordinaires : offices fédéraux**
18 (1) Subject to section 28, the Federal Court has exclusive original jurisdiction	**18 (1)** Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :
(a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or	**a)** décerner une injonction, un bref de certiorari, de mandamus, de prohibition ou

writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and **(b)** to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.	de quo warranto, ou pour rendre un jugement déclaratoire contre tout office fédéral; **b)** connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

***Federal Courts Rules* (SOR/98-106)**
***Règles des Cours fédérales* (DORS/98-106)**

Costs **Awarding of Costs Between Parties Discretionary powers of Court** **400 (1)** The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.	**Dépens** **Adjudication des dépens entre parties Pouvoir discrétionnaire de la Cour** **400 (1)** La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les payer.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Claire Kane Boychuk	FOR THE APPLICANT
Brooklynne Eeuwes	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claire Kane Boychuk Nelligan O'Brien Payne LLP Ottawa, Ontario	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT