Federal Court Cour fédérale

Date: 20250120

Docket: T-547-23

Citation: 2025 FC 114

Ottawa, Ontario, January 20, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

MARK J. DAGGETT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] On this application, Mark J. Daggett seeks judicial review of a decision of the Social Security Tribunal (SST) Appeal Division (AD) who refused his request to appeal the decision of the General Division (GD) denying him Employment Insurance (EI) benefits under the *Employment Insurance Act*, SC 1996, c 23 [*Act*]. Mr. Daggett was employed as a letter carrier with Canada Post (Employer) and was denied EI benefits when the Employment Insurance

Commission (Commission) determined that he was not entitled to benefits because he had been suspended for misconduct. The finding of the Commission was upheld by the GD.

[2] Mr. Daggett argues that the Commission and the GD failed to properly consider the relevant facts. First, he notes that he did not take a leave of absence as indicated by Canada Post on his Record of employment. Further he argues that he was under no legal or contractual obligation to disclose his personal health information. Finally, he argues that there could not be a finding of misconduct as there is no evidence from Canada Post on any policy that required him to disclose his vaccination status.

[3] I understand the arguments made by Mr. Daggett; however, the AD and this Court cannot assess the reasonableness of the vaccination policy of Canada Post – Mr. Daggett has other avenues available to raise that issue. Considering the limited mandate of the AD, I am satisfied that the decision is reasonable and therefore this judicial review is being dismissed.

I. Background

[4] Mr. Daggett had been employed with Canada Post since 1994. During his employment, he was a member of the Canadian Union of Postal Workers and was bound by the terms of a Collective Agreement.

[5] On November 29, 2021, when he reported to work, he was advised by his supervisor that there “was no work for him” and that he would be called back when there was work. In the

Record of Employment prepared by Canada Post, the reason for "no work" was listed as ""N" – Leave of Absence."

[6] On December 10, 2021, Mr. Daggett applied for EI benefits, indicating that he was on a wrongful leave of absence.

[7] The Commission investigated and determined that he was not entitled to EI benefits because his failure to comply with his employer's vaccination policy was "misconduct" under the *Act*. The Commission noted that the Employer implemented a mandatory COVID-19 Vaccination Policy (Policy), requiring employees to attest to their vaccination status.

[8] Mr. Daggett appealed this decision to the GD who dismissed his appeal, finding that the employer had a policy requiring its employees to attest to their vaccination status, that it had been communicated to the employees via email, and that Mr. Daggett was aware of the consequences of non-compliance. The GD confirmed that Mr. Daggett's conduct amounted to misconduct under the *Act*.

II. Decision of the AD

[9] Before the AD, Mr. Daggett argued that the GD made procedural, legal, and factual errors as follows:

- It displayed bias by relying on the Commission's submissions while disregarding the Claimant's;

- It disregarded the protections contained in the Canadian *Human Rights Act* and the *Canadian Charter of Rights and Freedoms*;
- It ignored the collective agreement between the Claimant's employer and his union, which says nothing about requiring a COVID-19 vaccination as a condition of employment;
- It failed to consider a recent General Division decision recognizing that the imposition of mandatory vaccination policy changes the terms of the contract between employee and employer;
- It contradicted itself by saying, on one hand, that the Claimant had refused to say whether he had been vaccinated and, on the other, that he had refused to get vaccinated altogether. In fact, he has never refused to be vaccinated and only objects to disclosing personal medical information.

[10] The AD determined that there were no reviewable legal errors with the GD Decision, as it correctly interpreted "misconduct" under the *Act*, and that the SST lacked jurisdiction to adjudicate accusations of wrongdoing on the part of the employer. The AD further found no evidence to substantiate the allegations of bias against the GD. The AD concluded that Mr. Daggett did not demonstrate a reasonable chance of success on limited statutory grounds for appeal.

III. Issue and Standard of Review

[11] On this judicial review Mr. Daggett makes several arguments; however, the issue is whether the decision of the AD is reasonable.

[12] 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 (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85). On a reasonableness review, the Court seeks to understand the decision-makers reasoning process and looks for justification, transparency, and intelligibility, and asks if the decision is justified in relation to the relevant facts and law (*Vavilov* para 99).

IV. Analysis

A. *There is no reviewable legal error in the GD's finding of misconduct*

[13] Mr. Daggett challenges the finding of misconduct. He argues that there could not be a finding of misconduct as there is no evidence from Canada Post on any policy that required him to disclose his vaccination status. Relatedly he argues that there is a procedure to be followed under the collective agreement when misconduct is alleged, which did not occur here.

[14] To properly position Mr. Daggett's arguments, it is important to note that under subsection 58(1) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [*DESDA*], the AD can only grant leave if the appellant demonstrates that the appeal has a reasonable chance of success on at least one of three enumerated grounds of appeal: (a) a breach of natural justice or jurisdictional error; (b) a legal error; or (c) an erroneous factual finding, made perversely and capriciously or without regard for the material before it. If there is no reasonable chance of success of appeal on these enumerated grounds, then the AD must refuse leave.

[15] Subsection 30(1) of the *Act* states that a claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct. The word "misconduct" is not defined in the *Act*. Guidance is provided in *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36 at para 14, where the Court of Appeal found that "misconduct" in the employment insurance context arises where the claimant "knew or ought to have known that his conduct was such as to impair the performance of the duties owed to his employer and that, as a result, dismissal was a real possibility."

[16] The AD relied upon the GD finding of misconduct and specifically the factual findings that it was Mr. Daggett's refusal to disclose his vaccination status that amounted to misconduct disentitling him to EI benefits. As noted in the GD Decision:

> [14] The employer made it clear that it expected the Claimant to attest to his vaccination status. The Claimant said the employer sent emails notifying all employees of the practice. He also received numerous phone calls reminding him to call the employer's hotline to attest to his vaccination status. One time, a supervisor asked him for his vaccination status as he entered the workplace. The Claimant refused to tell the employer his vaccination status. He was told that if he didn't attest to his vaccination status that he could be put off work.
>
> [15] The Claimant didn't attest to his vaccination status as the employer expected. He tried to enter the workplace on November 27, 2021, but was told there "was no work for him." He responded by giving a letter to his supervisor saying that they could be held personally liable for putting him off work for reasons outside of his contract. He said that he had kept this letter in his pocket for over a week because "things were escalating."
>
> [16] The Claimant said that he assumed he was being put off work because he had not attested to his vaccination status, but that he was not told that directly at the time.

> [17] I find the evidence supports that the Claimant was suspended from work because he chose not to disclose his vaccination status, as required by the employer's vaccination practice. The employer communicated to the Claimant its expectations about disclosing his vaccination status. It told him that he could be put off work if he didn't attest to his vaccination status. The Claimant carrying the letter for his supervisor notifying them of potential liability for putting him off work also indicates the Claimant expected to be put off work.

[17] Mr. Daggett argues that in considering the allegation of misconduct, the terms of the collective agreement must be considered. In this regard, he notes that there is no requirement in the collective agreement that he provide proof of vaccine status. In other words, he argues that Canada Post acted outside the terms of the collective agreement when it imposed this policy. He argues that the Collective Agreement is binding on all the parties, and that the *Act* cannot supersede or otherwise interfere with the terms of the contract. He argues that the AD erred in not giving weight to these terms in their Decision not to grant leave.

[18] The AD considered Mr. Daggett's arguments on the authority of Canada Post to impose a vaccine policy and noted that it is beyond the jurisdiction of the AD to determine the lawfulness of an employer's policies when it found. The AD noted:

> [14] The General Division described its approach to misconduct this way:
>
> > [T]his Tribunal is not allowed to consider whether an action taken by an employer violates a claimant's Charter fundamental rights. This is beyond my jurisdiction. Nor is the Tribunal allowed to make rulings based on the *Canadian Bill of Rights* or the *Canadian Human Rights Act* or any of the provincial laws that protect rights and freedoms.

> > Claimant may have other recourse to pursue his claims that the employer's policy violated his rights. But, these matters must be addressed by the correct court or tribunal. They are not within my jurisdiction to decide.
>
> These paragraphs accurately summarize the law around misconduct. The courts have consistently held that decision-makers tasked with assessing misconduct under the *Employment Insurance Act* (EI Act) do not have the authority to decide whether an employer's policies are reasonable, justifiable, or even legal.
>
> [15] A recent decision has reaffirmed this principle in the context of COVID-19 vaccination mandates. *Cecchetto*, as in this case, involved a claimant's refusal to follow his employer's COVID-19 vaccination policy. The Federal Court confirmed the Appeal Division's decision that this Tribunal is not permitted to address these questions by law. The Court agreed that by making a deliberate choice not to follow the employer's vaccination policy, the Claimant had lost his job because of misconduct under the EI Act. The Court said that there were other ways in which the Claimant could advance his human rights claims under the legal system.
>
> [16] Here, as in *Cecchetto*, the only questions that matter are whether the Claimant breached his employer's vaccination policy and, if so, whether that breach was deliberate and foreseeably likely to result in dismissal. In this case, the General Division had good reason to answer "yes" to both questions.

[19] In considering "misconduct" under the *Act*, the issue is the objective knowledge and wilfulness of the conduct in question. A finding of misconduct does not require an examination of the provisions of the employment contract (*Canada (Attorney General) v Lemire*, 2010 FCA 314 at paras 22-23). Indeed, neither the GD nor the AD have the jurisdiction to determine whether an individual was wrongfully dismissed or whether the employer should have made reasonable accommodations. The AD Decision can only consider if what the Claimant did or did not do amounts to "misconduct" under the narrow parameters of the *Act*.

[20] Here, it was reasonable for the AD to deny leave based upon the GD misconduct findings. The GD found that Mr. Daggett was aware that his employer expected him to attest to his vaccination status by a certain date and that he knew or ought to have known that willful non-compliance with the vaccine attestation policy would have employment consequences.

[21] Considering these factual findings and considering the legislative constraints on the AD under subsection 58(1) of the *DESDA*, the AD reasonably denied leave to appeal because they determined Applicant failed to raise a reviewable legal error.

B. *The case law presented by the Applicant does not bind the AD*

[22] Mr. Daggett argues that the AD was bound to follow the decision in *AL v Canada Employment Insurance Commission*, 2022 SST 1428 [*AL*], where the EI claimant was found to be entitled to benefits even though he disobeyed his employer's mandatory COVID-19 vaccination policy.

[23] In my view it was reasonable for the AD to find that it was not bound by this decision primarily because Mr. Daggett did not rely upon the *AL* decision in his submissions to the GD and therefore it was not an issue decided by the GD. But in any event, *AL* is factually different from Mr. Daggett's case, and I understand the decision was overturned by the AD and is currently before the Federal Court of Appeal. This case is of no assistance to Mr. Daggett.

[24] In conclusion, there is no merit to Mr. Daggett's submissions that the AD was bound to follow the *AL* decision.

C. *The bias allegation has no merit*

[25] Mr. Daggett argues that the AD Decision was biased in that it disregarded the circumstances surrounding the GD Decision, specifically the fact that the Employer and Commission did not attend the hearing to provide testimony or to be questioned on their written submissions. He argues that their submissions were treated as fact, and that he was not "treated in the same way," resulting in bias.

[26] This was addressed by the AD as follows:

> [9] The Claimant accuses the General Division of bias, but he offers no evidence other than the fact that his appeal went against him. Bias suggests a closed mind that is predisposed to a particular result. The threshold for a finding of bias is high, and the burden of establishing it lies with the party alleging its existence. Whether bias exists depends on the particular facts of a case.
>
> [10] The Supreme Court of Canada has stated the test for bias as follows: "What would an informed person, viewing the matter realistically and practically and having thought the matter through conclude?" An allegation of bias cannot rest on mere suspicion, pure conjecture, insinuations, or mere impressions.
>
> [11] The Claimant complains that he was not given an opportunity to put questions to the Commission. However, the Commission, like any party, was under no obligation to attend the hearing. The Commission did submit a written argument defending its position, and the Claimant was free to bring any deficiencies in it to the General Division's attention. Contrary to the Claimant's allegations, the General Division did not ignore his submissions but engaged with them at some length in its decision. The General Division did not draw the conclusions that the Claimant would have liked, but that does not mean it was predisposed against him.

[27] I take Mr. Daggett's complaints of bias to be more properly viewed as a complaint that the Commission did not take an active role in the proceeding before the GD. As noted by the AD, the other parties are under no obligation to participate in the proceeding, and the Commission chose to rely on written submissions. Bias is a serious allegation that requires some evidence beyond an allegation. Here, there is no such evidence. It was therefore reasonable for the AD to conclude that there was no bias.

[28] In my view there is no merit to the bias allegations.

V. Conclusion

[29] Overall, the AD Decision is justified, intelligible, and transparent in finding that Mr. Daggett failed to demonstrate a reasonable chance of success on the limited grounds for appeal outlined in the *DESDA*. Many of the issues raised by Mr. Daggett are beyond the narrow and specific jurisdiction of the AD.

[30] As there are no grounds for this court to interfere with the AD Decision, this judicial review is dismissed. The respondent did not request costs, and none are awarded.

JUDGMENT IN T-547-23

THIS COURT'S JUDGMENT is that:

1. This judicial review is dismissed.

2. No costs are awarded.

"Ann Marie McDonald"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET:	T-547-23
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PLACE OF HEARING:	FREDERICTON, NEW BRUNSWICK
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JUDGMENT AND REASONS:	MCDONALD J.
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APPEARANCES:

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Rebekah Ferriss	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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