Federal Court Cour fédérale

Date: 20250312

Docket: IMM-16153-23

Citation: 2025 FC 458

Ottawa, Ontario, March 12, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

NORTHERN TROPIC HOMES LTD

Applicant

and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT

Respondent

JUDGMENT AND REASONS

[1] This is the first time this Court has been asked to review an administrative decision-maker's interpretation and application of the residual justification power under paragraph 209.3(3)(f) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*]. Specifically, this judicial review requires the Court to assess whether it is reasonable to impose monetary compensation for wage reductions as a mandatory prerequisite for invoking the justification provided by paragraph 209.3(3)(f).

[2] The Applicant, Northern Tropic Homes Ltd., seeks judicial review of a Notice of Final Determination [Final Notice] dated November 23, 2021, issued by the Integrity Services Branch [Integrity Services] of the Department of Employment and Social Development. The Integrity Services determined that the Applicant failed to comply with the wage conditions under subparagraph 209.3(1)(a)(iv) of the *Regulations*, finding that the Applicant's unilateral reduction of a temporary foreign worker's hourly wage from $30.00 to $24.00 was unjustified under subsection 209.3(3) of the *Regulations*. The Integrity Services further determined that the Applicant could not rely on paragraph 209.3(3)(f) to justify the wage reduction without demonstrating that it had already compensated the temporary foreign worker [Worker] for the wage shortfall. Consequently, the Integrity Services imposed an administrative monetary penalty of $7,000 and directed that the Applicant be added to the list of non-compliant employers.

I. Facts

[3] The Applicant is a small construction business located in Victoria, British Columbia. In April 2016, the Applicant sought to hire a lead carpenter. It conducted interviews with several Red Seal certified carpenter candidates. The Applicant ultimately extended an offer of employment to the Worker then residing in Saskatchewan. By letter dated May 6, 2016, the Applicant confirmed the Worker's employment, noting his possession of requisite certification hours and his commitment to obtain Canadian certification within his first year of employment.

[4] On July 11, 2016, the Respondent issued the Applicant a positive Labour Market Impact Assessment [LMIA] authorizing the hiring of one Lead Carpenter position in Victoria. The

LMIA specified mandatory terms including: an hourly wage of $30.00, 4% vacation pay, standard working hours of eight per day and 40 per week, and overtime at $45.00 per hour for work exceeding 40 weekly hours. The position required a relevant trade diploma or certificate.

[5] The Worker obtained a work permit on September 24, 2016, and began employment on October 11, 2016. The Applicant helped facilitate the Worker's relocation, including personally securing accommodation, co-signing the lease agreement, and paying the first month's rent and damage deposit totalling $915.00.

[6] During initial in-person meetings in October 2016, it became apparent that the Worker's experience was more limited than represented during the interview process. Specifically, while experienced in windows and log home construction, the Worker lacked substantial experience in glass glazing, footings, and foundations. The Worker also did not possess a Canadian Red Seal certification, contrary to earlier representations. Consequently, the Worker required extensive training from the Applicant's head carpenter over approximately six to seven months, resulting in an alleged cost of several thousand dollars.

[7] The Applicant decided to reduce the Worker's hourly wage to $24.00 to reflect this lack of experience and the training he required. The Applicant claims that over several months, they made multiple unsuccessful attempts to contact the only LMIA officer whose contact information was available to them to seek approval for this reduction. However, the officer was unresponsive and had a perpetually full voicemail. In the interim, the Applicant provided additional benefits, including a bi-weekly gas allowance of $150.00. By the spring of 2017, as

the Worker's skills improved, his wage was gradually increased to $26.00 per hour and ultimately restored to $30.00 per hour.

[8] On September 20, 2017, the Respondent initiated a random verification of the Applicant's compliance with the *Regulations*. On October 5, 2017, the Applicant submitted documentation including completed Annex A and B forms, WorkSafe BC coverage confirmation, business licence and locations, employee earnings summary, relevant paystubs for the period between October 7, 2016 and February 12, 2017, and vendor reports for housing payments. Through this inspection, the Integrity Services identified a breach of subparagraph 209.3(1)(a)(iv) of the *Regulations*, specifically the failure to provide wages "substantially the same as — but not less favourable than — those set out in [the] offer" and the LMIA. This determination rested on documented evidence that the Worker received $24.00 per hour instead of the LMIA-specified $30.00 per hour, resulting in an economic benefit to the Applicant of $3,726.00 over 621 hours.

[9] On December 18, 2019, the Respondent issued a Notice of Preliminary Finding [Preliminary Notice] that described the Applicant's violations and indicated a potential $7,000 administrative monetary penalty. The Respondent invited submissions from the Applicant pursuant to section 209.994 of the *Regulations*. After receiving an extension on January 14, 2020, the Applicant submitted a detailed response on January 21, 2020, to explain the training costs incurred, the housing assistance provided, and other circumstances surrounding the wage reduction.

[10] Following the Preliminary Notice, an "objective review" was conducted on April 9, 2020, by an independent regional committee. The committee examined the Applicant's written submissions and additional evidence in response to the process. It concluded that "no new information was provided" that would alter the preliminary findings.

II. Decision Below

[11] The Respondent issued the Final Notice on November 23, 2021. Building on the findings of the Preliminary Notice that the Applicant breached subparagraph 209.3(1)(a)(iv) of the *Regulations* by obtaining an economic benefit from reducing the Worker's wage, the Integrity Services' analysis in the Final Notice centered on whether the wage reduction could be justified under subsection 209.3(3) of the *Regulations*. This determination proved dispositive of the compliance assessment.

[12] Regarding the Applicant's justification, Integrity Services concluded that "the justification received is not acceptable under the Immigration and Refugee Protection Regulations (IRPR) [subsection 209.3(3)] as no compensation was provided to the TFW." The supporting analysis rested on several key findings: (1) the Applicant did not obtain prior approval from the Respondent before implementing the wage reduction; (2) the Applicant's claimed multiple attempts to contact the LMIA officer were deemed insufficient; (3) despite awareness of the wage discrepancy, the Applicant provided no compensation to address the shortfall; (4) the justification offered regarding the Worker's qualifications and training needs, while potentially acceptable under subsection 209.3(3), was ultimately rejected due to lack of

compensation; and (5) alternative benefits provided were not considered as offsetting the wage reduction.

[13] The Integrity Services' determination of the appropriate sanction was based on a point system under section 209.991 of the *Regulations*. The assessment allocated points according to the seven different categories as follows: one point for the number of workers affected; one point for first violation under Type A and B violations compliance history; two points for competitive or economic benefit between $2,001-$4,000; zero points for absence of financial abuse charges or convictions; zero points for labour market impact; two points for minimization/remediation efforts where the employer demonstrated some reasonable action but much more could have been done; and zero points for prevention of recurrence where reasonable efforts were shown.

[14] Based on these five points, Integrity Services imposed an administrative monetary penalty of $7,000.00 and directed the publication of the Applicant's business name and violation details on the Immigration, Refugees and Citizenship Canada's public list of non-compliant employers.

III. Issues

[15] The Applicant seeks to have the Final Notice set aside based on breaches of procedural fairness and the unreasonableness of the decision.

[16] With respect to procedural fairness, the key issue is whether Integrity Services violated fairness principles by relying on a memorandum that allegedly failed to accurately reflect the

substance of the Applicant's submissions. The Applicant argues that this omission effectively denied it a meaningful opportunity to be heard.

[17] With respect to reasonableness, the central issue is whether Integrity Services' interpretation and application of the justification provisions under subsection 209.3(3) of the *Regulations* were reasonable. Specifically, this involves assessing whether Integrity Services unreasonably treated compensation as a mandatory prerequisite for justification, particularly when considering the unique broader factual context at play.

IV. Standard of Review

[18] The Final Notice of Integrity Services is reviewable on the standard of reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[19] The best articulation of the standard of review for procedural fairness is one that resembles the correctness standard and asks "whether the procedure was fair having regard to all of the circumstances": *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] at para 54; *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107. The goal of the procedural fairness review should always be investigating "the ultimate question [of] whether the applicant knew the case to meet and had a full and fair chance to respond": *Canadian Pacific* at para 56.

V. Legal Framework

[20] Subparagraph 209.3(1)(a)(iv) of the *Regulations* sets out the requirement that an employer must provide foreign nationals with employment conditions, including wages, that are "substantially the same but not less favourable" than those authorized by the corresponding positive LMIA:

Foreign national referred to in subparagraph 200(1)(c)(iii)	**Étranger visé au sous-alinéa 200(1)c)(iii)**
209.3 (1) An employer who has made an offer of employment to a foreign national referred to in subparagraph 200(1)(c)(iii) must comply with the following conditions:	**209.3 (1)** L'employeur qui a présenté une offre d'emploi à un étranger visé au sous-alinéa 200(1)c)(iii) est tenu de respecter les conditions suivantes :
(a) during the period of employment for which the work permit is issued to the foreign national,	**a)** pendant la période d'emploi pour laquelle le permis de travail est délivré à l'étranger :
…	[…]
(iv) subject to subparagraph (xii), <u>the employer must provide the foreign national</u> with employment in the same occupation as that set out in the foreign national's offer of employment and <u>with wages and working conditions that are substantially the same as — but not less favourable than — those set out in that offer</u>,	**(iv)** sous réserve du sous-alinéa (xii), <u>il lui confie un emploi</u> dans la même profession que celle précisée dans son offre d'emploi et lui verse un salaire et lui ménage des conditions de travail <u>qui sont essentiellement les mêmes — mais non moins avantageux — que ceux précisés dans l'offre</u>,
[emphasis added]	

[21] If an employer violates subsection 209.3(1) by failing to meet the prescribed statutory obligations, subsection 209.3(3) of the *Regulations* allows for a *post-hoc* justification of the wage reduction:

Justification	**Justification**
209.3 (3) A failure to comply with any of the conditions set out in subparagraphs (1)(a)(i) to (xiv) and paragraphs (1)(a.1) and (b) is justified if it results from a:	**209.3 (3)** Le non-respect de l'une des conditions prévues aux sous-alinéas (1)a)(i) à (xiv) et aux alinéas (1)a.1) et b) est justifié s'il découle, selon le cas :
(a) a change in federal or provincial law;	**a)** d'une modification apportée aux lois fédérales ou provinciales;
(b) a change to the provisions of a collective agreement;	**b)** d'une modification apportée à une convention collective;
(c) the implementation of measures by the employer in response to a dramatic change in economic conditions that directly affected the business of the employer, provided that the measures were not directed disproportionately at foreign nationals employed by the employer;	**c)** de la mise en oeuvre, par l'employeur, de mesures qui permettent de faire face à des changements économiques importants touchant directement son entreprise, et ce, sans que cela ne vise de façon disproportionnée tout étranger à son service;
(d) an error in interpretation made in good faith by the employer with respect to its obligations to a foreign national, if the employer subsequently provided compensation — or if it was not possible to provide compensation, made sufficient efforts to do so — to all foreign nationals who	**d)** d'une interprétation erronée de l'employeur, faite de bonne foi, quant à ses obligations envers l'étranger, s'il a indemnisé tout étranger lésé par cette interprétation ou, s'il ne l'a pas indemnisé, il a fait des efforts suffisants pour le faire;

English	French
suffered a disadvantage as a result of the error;	
(e) an accounting or administrative error made by the employer, if the employer subsequently provided compensation — or if it was not possible to provide compensation, made sufficient efforts to do so — to all foreign nationals who suffered a disadvantage as a result of the error;	**e)** d’une erreur comptable ou administrative commise par l’employeur à la suite de laquelle celui-ci a indemnisé tout étranger lésé par cette erreur ou, s’il ne l’a pas indemnisé, il a fait des efforts suffisants pour le faire;
(f) circumstances similar to those set out in paragraphs (a) to (e);	**f)** de circonstances semblables à celles prévues aux alinéas a) à e);
(g) superior force; or	**g)** d’un cas de force majeure;
(h) an error in interpretation made in good faith by the employer with respect to its compliance with the conditions set out in any of subparagraphs (1)(a)(vii) to (xi).	**h)** d’une interprétation erronée de l’employeur, faite de bonne foi, quant au fait qu’il respecte les conditions prévues aux sous-alinéas (1)a)(vii) à (xi).

[22] Subparagraph 209.3(1)(a)(iv) of the *Regulations* mandates that employers must provide temporary foreign workers [TFWs] with substantially the same wages and working conditions as set out in the relevant LMIA. Where an employer modifies those wages or working conditions, subsection 209.3(3) of the *Regulations* provides very narrowly defined circumstances in which non-compliance may be justified. Specifically, paragraphs (d) and (e) both explicitly require that wage shortfalls be monetarily compensated, or that the employer make sufficient efforts to do so, if the breach results from an accounting or administrative error or a good faith error in interpretation.

[23] In contrast, paragraph 209.3(3)(f) covers “circumstances similar to those set out in paragraphs (a) to (e).” The wording in this catch-all discretionary justification provision is significantly more open-ended than the other paragraphs. It neither categorically requires the payment of wages for the justification to apply nor rejects it. This provision is simply silent on the requirement for this justification to apply.

[24] While the jurisprudence from this Court is clear that subsection 209.3(3) provides limited exceptions to non-compliance, there is no case law specifically addressing paragraph 209.3(3)(f). The two most relevant cases are *Luigi’s Concrete Ltd. v Canada (Employment and Social Development)*, 2024 FC 1446 [*Luigi’s Concrete*] and *Obeid Farms v Canada (Employment and Social Development)*, 2017 FC 302 [*Farms*]. Both engage with paragraphs (d) or (e); neither addresses paragraph (f).

[25] In *Luigi’s Concrete*, the employer unilaterally reduced the wages of three TFWS from $30 to $20 per hour, claiming the workers lacked the skills for their designated roles. The employer argued that it had offset the wage reduction by providing rent-free accommodation and other voluntary benefits. The Court rejected this argument, emphasizing that paragraph 209.3(3)(d) requires employers to provide direct monetary compensation for wage shortfalls caused by errors. The Court explained that voluntary benefits, even if agreed to by workers, do not satisfy this requirement. Specifically, it held that allowing employers to substitute voluntary benefits for wages would “circumvent the purpose of the justification provisions,” which is to ensure TFWs receive the full value of their labour as guaranteed by the LMIA and to give effect to Parliament’s intent of preventing abuse of highly vulnerable TFWs: *Luigi’s Concrete* at para 25, citing *Farms* at para 32.

[26] Similarly, in *Farms*, the employer deducted wages to account for alleged cash advances provided to TFWs. The Court rejected this justification, noting that voluntary benefits cannot justify non-compliance because they lack transparency and create risks of coercion. The Court stressed that subsection 209.3(1)(a)(iv) requires employers to provide wages and working conditions “substantially the same” as the LMIA offer, with deviations under paragraphs 209.3(3)(d) and (e) permitted only in narrow, documented circumstances: *Farms* at paras 37-41. The Court also highlighted the inherent and significant power imbalance between employers and TFWs, stating that “voluntary” agreements to accept alternative compensations are often illusory given TFWs’ precarious immigration status: *Farms* at para 50.

VI. Analysis

A. *The Integrity Services’ decision-making process did not breach procedural fairness*

[27] The Applicant’s procedural fairness challenge centres on the adequacy of the distillation and transmission of its arguments to the ultimate decision-maker. Specifically, it contends that Integrity Services’ reliance on the internal memorandum materially compromised the fairness of the decision-making process because the memorandum is overly reductive. Drawing direct parallels to the “fundamental and determinative flaw” identified in *Ayr Motors Express Inc. v Canada (Employment Workforce Development and Labour)*, 2017 FC 514 [*Ayr Motors*] at paragraph 22, the Applicant emphasizes that the memorandum’s condensation of 41 pages of submissions into several sentences systematically excluded critical contextual evidence. Namely, the provision of extensive training over a six to seven month period at substantial cost, the implementation of progressive wage increases correlated with skill development, the provision of housing assistance including a $915.00 initial accommodation payment, the

maintenance of a $150.00 bi-weekly gas allowance, and documented attempts to contact Service Canada. Additionally, the Applicant submits that the purported procedural safeguard of an "objective review" by an independent committee further obscures the decision-making process, as the record is devoid of information regarding the composition, mandate, analytical framework, or scope of authority of this committee.

[28] The Respondent maintains that the procedural framework satisfied administrative fairness requirements through a structured series of opportunities for the Applicant to present its position. Beginning with the initial inspection letter in November 2017, followed by the Preliminary Notice which specifically invited new information and submissions, the Applicant has been consistently informed about the potential acceptability of their justification if compensation was provided. The Respondent emphasizes that unlike in *Ayr Motors*, where no substantive summary was provided, the memorandum here contained a balanced presentation of the Applicant's primary justifications, including their attempts to contact Service Canada and their reasoning for the wage reduction based on qualification concerns. While the memorandum may have provided abbreviated treatment of alternative benefits such as training and housing assistance, the Respondent submits that these elements were wholly irrelevant to the fundamental question of wage compliance under the regulatory framework. The condensed presentation thus did not constitute a procedural deficiency warranting judicial intervention.

[29] I agree with the Respondent. The issue of procedural fairness is best assessed through the lens of two key questions: (1) whether the decision-maker received sufficient information to properly evaluate the matter, and (2) whether any omitted information was material to the statutory determination. In my view, neither points to a breach of procedural fairness.

[30] As the Respondent rightly suggests, the present case is distinguishable from *Ayr Motors*. In that case, the memorandum was deficient because it completely failed to convey the "gist of the Applicant's position" and contained "none of the Applicant's submissions which could have enabled the [decision-maker] to appreciate the nature of the alleged misleading or incorrect information nor any mention of the Applicant's overall compliance." By contrast, the memorandum in this case accurately summarizes the facts relevant to wage compliance, including the Applicant's justification regarding worker qualifications, its attempts to contact Service Canada, and, crucially, its acknowledgment of non-payment of wage compensation. Additionally, the memorandum records the Applicant's overall compliance efforts and attempts to obtain approval. The abbreviated treatment of alternative benefits does not constitute a procedural deficiency precisely because these elements, while contextually interesting, are not determinative under the regulatory framework governing wage compliance.

[31] Moreover, the Integrity Services' process aligns with the principles articulated in *Denso Manufacturing Canada, Inc. v Canada (National Revenue)*, 2020 FC 360 [*Denso*]. As established in paragraph 30 of that case, internal analyses and memoranda do not need to be fully disclosed if they do not materially alter the decision-making framework in a way that prejudices the affected party. In this case, the memorandum appropriately distills the submissions relevant to wage compliance, which are those that directly pertain to the mandatory regulatory requirements under review. The omission of a detailed breakdown of every alternative benefit provided to the Worker is immaterial to the determination. Therefore, the memorandum is structured in a way that serves its administrative function without compromising procedural fairness.

[32] The Applicant's concern regarding the "objective review" process similarly fails to establish a procedural deficiency. Consistent with *Denso*, the precise composition and mandate of internal review mechanisms do not need to be disclosed when, as here, they serve as quality assurance processes rather than introducing new determinative elements into the decision-making process. Moreover, *Dissanayakage v Canada (Minister of Citizenship and Immigration)*, 2004 FC 582, confirms, in paragraphs 16 to 18, that procedural fairness does not require full disclosure of internal processes that review submissions without introducing new material considerations or raising new concerns. The record shows that the Applicant was clearly informed through the Preliminary Notice of the centrality of wage compensation to their justification, had multiple opportunities to address this issue, and that their submissions were appropriately synthesized for the decision-maker's consideration of statutorily relevant factors. The Applicant therefore knows the case to be met and had the opportunities to meet it.

B. *The Integrity Services' decision is not reasonable*

[33] The Applicant challenges the reasonableness of Integrity Services' Final Notice on two connected grounds. First, the Applicant argues that Integrity Services improperly treated wage compensation as a mandatory prerequisite under paragraph 209.3(3)(f) of the *Regulations*. Drawing on the principles articulated in *Ghossn v Canada (Citizenship and Immigration)*, 2022 FC 1338 [*Ghossn*], the Applicant contends that Integrity Services erred by elevating wage compensation to an absolute requirement without explicit statutory support. This, the Applicant asserts, amounted to an improper fettering of discretion, as Integrity Services was barred from meaningfully considering the broader context, including the Applicant's good faith efforts to contact Service Canada, the provision of alternative benefits, and the justification for the

temporary wage reduction. The Applicant further argues that this rigid interpretation contradicts Integrity Services' own internal memorandum, which acknowledged that the justification "could have been accepted" had wage compensation been made, but failed to explain why wage compensation was deemed essential.

[34] Second, the Applicant contends that while Integrity Services' strict interpretation aims to protect TFWs, it must be balanced against the broader regulatory framework that allows for greater flexibility in compensation. The Applicant distinguishes this case from *Luigi's Concrete* and *Farms* by pointing to its mitigating measures, such as providing gas allowances, subsidizing housing, investing in extensive training, and ultimately restoring the original wage once the Worker's skills were deemed satisfactory. These actions, the Applicant argues, align with the "similar circumstances" envisioned by paragraph 209.3(3)(f) of the *Regulations*. Building on this broader and more flexible interpretation, the Applicant maintains that paragraph 209.3(3)(f), while referring to circumstances akin to those in paragraphs (a) to (e), inherently allows for discretion in determining what qualifies as "similar circumstances." Accordingly, the Applicant asserts that reasonable explanations and alternative forms of compensation, even in the absence of direct wage repayment, should suffice for compliance.

[35] In my view, both objections are well founded.

[36] *Luigi's Concrete* and *Farms* are materially distinguishable from the present facts, making the Respondent's reliance on them misplaced.

[37] In *Luigi's Concrete*, the employer flatly refused to reimburse any wage shortfall and had a prior history of similar breaches. During a previous compliance review, it had been explicitly warned about the need to report wage reductions to Integrity Services. Yet it ignored these warnings and insisted the TFWs lacked the requisite skills, never offering proof of that claim or repaying the shorted wages even after the TFWs eventually performed advanced duties. Instead, it pointed to purported "voluntary" non-monetary benefits, such as rent-free housing and small allowances, without reliable documentation of their existence or monetary value. In short, the business in *Luigi's Concrete* had already been told that wage changes must be reported and compensated, yet chose to disregard that instruction and later provided no justification.

[38] By contrast, the Worker's credentials were pivotal to the Applicant's decision to hire him but they turned out to be significantly different from what he had represented. Crucially, unlike the employer in *Luigi's Concrete*, the Applicant's justification was not an after-the-fact attempt to excuse non-compliance. Rather, the record contains multiple references to the Applicant's persistent but unsuccessful efforts to seek guidance from Integrity Services over several months. These efforts were frustrated by a perpetually full voicemail and unanswered calls. Also, the temporary wage reduction was partly offset by recurring gas allowances, first-month rent assistance, and incremental increases tied to the Worker's improving skill level. All of these are quantifiable and objectively verifiable benefits.

[39] *Farms* presents a similar contrast. The employer there systematically deducted wages from about twenty TFWs under the guise of "cash advances," forced them to work seven days a week, and provided no documentation showing a legitimate agreement to do so or that doing so

was somehow statutorily or contractually compliant. It was in such a context that this Court stressed the need for a strict reading of subsection 209.3(3), remarking at paragraph 31 that:

> … the justification provisions must be strictly interpreted… The intention of Parliament in enacting these provisions was to prevent abuse of highly vulnerable temporary foreign workers, given the tenuous circumstances of their employment which lack the normal safeguards preventing abuse otherwise available to most Canadian workers.

[40] *Farms* differs from the scenario at bar in at least three key respects. First, as in *Luigi's Concrete*, the employer did not meaningfully try to notify or consult Integrity Services. Here, the Applicant attempted, albeit unsuccessfully, to obtain approval from the authorities over an extended period. Second, *Farms* involved coercive or exploitative working conditions in which TFWs were effectively compelled to accept wage deductions and work extra days. That level of abuse is nowhere to be seen here. To the contrary, the Worker received financial housing assistance, took time off as needed, and only experienced a reduced wage for the period in which he lacked the qualifications. Third, whereas *Farms* involved continuing wage suppression, the Applicant in this case restored the original $30 hourly rate once the Worker reached what it deemed to be the LMIA-designated and initially represented skill level.

[41] Thus, while *Luigi's Concrete* and *Farms* correctly set the principle that worker protections must be safeguarded and sometimes necessitate direct compensation, neither case even touches on paragraph 209.3(3)(f). Instead, both cases condemned unilateral withholding of wages in situations where no credible or documented justification existed. That scenario does not align squarely with the facts here. Here, the Applicant (i) acted in good faith upon discovering the Worker's misrepresentations; (ii) took proactive steps to upgrade the Worker's

wage once he reached the LMIA skill level; and (iii) was effectively prevented from obtaining direct Integrity Services' approval despite a sincere attempt to navigate regulatory uncertainty completely due to administrative inefficiencies at Integrity Services. As a result, the interpretive guides articulated by this Court in those cases are only informative, not determinative in this case. There is no jurisprudential authority categorically holding that paragraph 209.3(3)(f) always requires after-the-fact wage repayment.

[42] The Applicant's submissions on proper statutory interpretation provide valuable insight into what constitutes a reasonable interpretation of paragraph 209.3(3)(f) of the *Regulations*. I agree with it that Integrity Services concluded that the Applicant's justification was unacceptable solely because it found the Worker was not compensated for the wage reduction. In other words, the decision-maker interpreted that granting any relief under "similar circumstances" envisioned by paragraph (f) must be predicated on the wage reduction being "compensated."

[43] No explanation is provided in the reasons for decision as to why the provision of compensation is to be read into paragraph 209.3(3)(f) of the *Regulations.* In my view, such a requirement is not obvious when the entire section is read. The requirement that a wage adjustment must be compensated is found expressly only in paragraphs 209.3 (d) and (e); both of which speak to an "error" having been made by the employer. In those situations, the employer's failure to pay wages as required can be justified if the error is remedied by providing compensation. However, paragraph 209.3(3)(f) is worded differently, stating that justification may arise from "circumstances similar to those set out in paragraphs (a) to (e)." This phrasing

clearly envisions a broader, “similar circumstances” analysis for scenarios akin to, but not necessarily identical with, paragraphs (d) or (e).

[44] This means that the decision-maker must assess all relevant facts to determine whether a given situation resembles one of the enumerated justifications. In some cases, requiring direct wage compensation under paragraph (f) might be reasonable, particularly if the non-compliance closely parallels the errors referenced in paragraphs (d) or (e). However, it is plainly unreasonable to impose a blanket requirement that wage compensation must be provided in every case under paragraph 209.3(3)(f). Not all situations falling within its scope involve administrative or interpretive errors akin to those described in paragraphs (d) and (e). A reasonable interpretation of paragraph (f) must allow the administrative decision-maker to consider and accommodate unique factual scenarios that, while like the specified justifications, are not identical to them.

[45] Indeed, if 209.3(3)(f) of the *Regulations* invariably demanded wage repayment, it would, as the Applicant’s counsel suggested at the hearing, collapse into paragraphs (d) and (e), depriving it of any independent meaning. If paragraph (f) were always interpreted to require repayment of wage differences, then it could never apply to situations like the one at hand. It is illogical to require that an employer who deliberately reduces wages based on what it believes to be legitimate reasons—and who actively attempts to seek approval from the relevant authorities—to then voluntarily repay the reduction that it seeks to justify in the first place. Such an interpretation would effectively nullify paragraph (f) and undermine the principle that legislation is not drafted in vain: *Medovarski v Canada (Minister of Citizenship and*

Immigration); *Esteban v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at paras 31-38. A proper reading of paragraph (f) must, therefore, allow for a fact-specific analysis rather than a rigid requirement of wage compensation in all circumstances.

[46] To be clear, I emphasize that the carve-out within paragraph 209.3(3)(f) of the *Regulations* is heavily circumscribed. Nothing in this decision should be interpreted as undermining the strong worker protections affirmed by precedents such as *Luigi's Concrete* and *Farms*. The legislative objectives provided by those cases remain paramount, particularly in the current increasingly uncertain immigration landscape. Rather, the point here is simply that automatically reading a compensation obligation into paragraph (f) is too narrow and, therefore, unreasonable, because it misreads that paragraph by shoehorning-in language that belongs exclusively to paragraphs (d) and (e).

[47] Here, the Applicant's wage adjustment was not the product of an "error" requiring compensation. It arose from a conscious business decision made after the Applicant realized the Worker's skills fell far short of what he had claimed prior to his employment. Integrity Services should have conducted a fact-specific assessment, considering the Worker's qualifications deviated substantially from the LMIA description, the wage reduction was temporary and reversed once the Worker reached the Red Seal certified lead carpenter standard, and the employer provided quantifiable financial support such as housing assistance and gas allowances, which arguably offset some of the lower wages during the training phase. However, the internal memorandum contained only a brief and superficial acknowledgment of these factors, with no meaningful engagement in the decision-making process. With such a record, I am not convinced

that these considerations were sufficiently factored into Integrity Services' reasoning. As a result, its decision under paragraph 209.3(3)(f) was both incomplete and unreasonable, reflecting an improper application of the rigid requirements under paragraphs (d) and (e) rather than the fact-specific inquiry paragraph (f) demands.

[48] I am also of the view that the decision fails the *Vavilov* test of reasonableness because it fails to give any weight to the Applicant's unsuccessful attempts to secure prior approval from Integrity Services. The record clearly shows that this failure was not the Applicant's fault but was that of the relevant representative(s) from Integrity Services.

[49] In its December 1, 2017 response to the Investigator from Integrity Services, the Applicant described its efforts as follows:

> Service Canada was not informed of the decision to reduce the [Worker]'s hourly wages because when calling Service Canada Directly [*sic*], the person whom I spoke with on the telephone had advised me that he was not able to update or take any information regarding the LMIA and that I was to contact the officer who issued the LMIA directly. So, with that said, the only information I had on contact for the LMIA was the person who issued the LMIA and signed off on our file Leslie Keirstead - Foreign Worker Officer (506-636-3008). <u>However, whenever trying to call her it would go to a full voicemail. I was unable to leave a message because her voice mail was full, so I continued to keep calling back for several moths</u> [*sic*]. After calling for several months, and still to this day, there was no answer, a full voice mail and no help from Canada Service. With that said, who should I contact to update the information? <u>No one has been able to help me with this, or give me the correct information</u>.
>
> [emphasis added]

It appears to me that the Applicant did everything it could to obtain Integrity Services's consent. It failed only because of the failure of the responsible employee to access her voice mail and

delete or answer messages. In effect, the Applicant was left in an administrative limbo. It was instructed to communicate changes through a specific officer, yet that officer was unreachable for months.

[50] How can it be reasonable that the Applicant is to be penalized for the faults of Integrity Services? I find it hard to imagine a more unreasonable situation. Following *Vavilov*, this Court has repeatedly emphasized that reasonableness review requires a decision-maker to engage with salient facts and provide a transparent rationale. Failing to address the role that Integrity Services' own unresponsiveness played in the Applicant's failure to remain statutorily compliant commits exactly this type of reviewable error. In my view, the effectiveness of the Temporary Foreign Worker Program's strict compliance regime is predicated on the fact that employers can reach the relevant authorities within a reasonable timeframe. The record undermines that foundation here. Had Integrity Services answered or provided alternative contact channels that are responsive, the Applicant could have remedied the shortfall on time, or alternatively obtained approval for the temporary wage reduction.

[51] Given the unique circumstances in this case, there is no doubt in my mind that, had the Integrity Services' officer received the message(s) and responded within a reasonable period, the only reasonable outcome would have been for the officer to accept the wage rate reduction. The Worker did not possess the certification on which the LMIA wage rate had been predicated. His wage was lowered initially but increased as he progressed toward the required skill level, and was ultimately restored once he could perform the duties he originally claimed to have mastered. Indeed, Integrity Services itself wrote in the internal memorandum:

> A justification letter was sent to the employer on November 2, 2017 for the difference between wages paid and wages shown on LMIA 8204931. The employer indicated they made several unsuccessful attempts to reach Service Canada to explain the reduced wage and was unable to get approval as several unreturned voicemails were left with the program officer who approved the LMIA. The employer did not provide compensation, nor was approval obtained from Service Canada to reduce the wage. … The justification received could have been accepted under the Immigration and Refugee Protection Regulations (IRPR) section 203 (1.1) but because the employer did not compensate the TFW, it was not accepted.
>
> [emphasis added]

In my view, the underlined portion of this reasoning effectively concedes that, but for the failure to comply with the mandatory wage repayment requirement, the Applicant's justification would have been accepted under the *Regulations*. Since I have already determined that the interpretation that paragraph 209.3(3)(f) automatically requires compensation is unreasonable, the only reasonable outcome in this case is to accept the Applicant's justification for the temporary wage reduction.

VII. Conclusion

[52] For the reasons above, the application is allowed. I find no breach of procedural fairness in Integrity Services' process: the Applicant knew the case to meet and was given adequate opportunities to respond. However, the decision is nonetheless unreasonable under *Vavilov* because the decision-maker (1) improperly imports a wage compensation requirement from paragraphs 209.3(3)(d) and (e) into paragraph 209.3(3)(f), where no such requirement exists; and (2) disregards the unique factual context of the case before them, including the Applicant's persistent but futile attempts to reach the Integrity Services' designated officer for prior approval.

[53] In its memorandum, the Applicant seeks as relief "an order for Writ of Certiorari, quashing the decision of the Assistant Deputy Minister, dated November 23, 2021." It does not seek that the matter be returned for redetermination. Given the legal framework and factual record, I fail to see any benefit in returning the matter back to be redetermined. A proper reading of paragraph 209.3(3)(f), combined with full consideration of the unique circumstances of this case, leads to only one reasonable outcome: the Applicant's wage reduction must be accepted and all orders to the contrary must be rescinded.

[54] No question was proposed for certification.

JUDGMENT in IMM-16153-23

THIS COURT'S JUDGMENT is that this application is allowed, the decision of the Assistant Deputy Minister, dated November 23, 2021, is quashed, and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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