

Federal Court



Cour fédérale

**Date: 20141028**

**Docket: T-441-14**

**Citation: 2014 FC 1023**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, October 28, 2014**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**ROBERT GRAVEL**

**Applicant**

**and**

**LABOUR STANDARDS BRANCH  
LABOUR PROGRAM  
EMPLOYMENT AND SOCIAL  
DEVELOPMENT CANADA (ESDC)**

**Respondent**

**JUDGMENT AND REASONS**

[1] Robert Gravel, the applicant, held the position of “Sales Specialist NAS (S.S.)” for the company Telus Communications Inc. (employer), from January 23, 2006, to November 12, 2007, the date on which the employer terminated his employment.

[2] Mr. Gravel is convinced that the employer unjustly dismissed him, whereas the employer maintains that it laid him off because of position abolishment. Mr. Gravel has argued his rights in several proceedings, without success on this aspect.

[3] On December 5, 2013, alleging that he had new evidence, Mr. Gravel filed an application to have his two initial complaints reopened, but the application was dismissed.

[4] Mr. Gravel is therefore asking the Court to review that decision to refuse to reopen his file.

[5] It would be useful to do a succinct review of the steps in the dispute between Mr. Gravel and the employer after his employment was terminated on November 12, 2007.

[6] As such, on December 21, 2007, Mr. Gravel filed two complaints with the Department of Human Resources and Skills Development Canada (HRSDC), which is now called the Department of Employment and Social Development. He filed a complaint of unjust dismissal under sections 240 *et seq.* of the *Canada Labour Code*, RSC 1985 c L-2 (CLC) and a wage recovery complaint under sections 188 and 247 of the CLC.

[7] On May 20, 2008, Inspector Johanne Blanchette ordered that the employer pay Mr. Gravel an amount of \$34,079.55. On May 23, 2008, the two parties appealed that payment order, and the file was referred to adjudication.

[8] On November 6, 2009, Adjudicator Léonce-E. Roy rendered a decision on the unjust dismissal complaint. After an exhaustive review of the employer's situation, he found that he could not intervene because Mr. Gravel had been laid off, not dismissed, in accordance with paragraph 242(3.1)(a) of the CLC. On November 12, 2009, Adjudicator Roy rendered a decision on the wage recovery complaint and allowed the employer's appeal.

[9] On June 7, 2011, this Court dismissed the applications for judicial review of the two adjudication decisions filed by Mr. Gravel.

[10] On February 8, 2012, the Federal Court of Appeal dismissed Mr. Gravel's appeals from the decisions of this Court, and on September 27, 2012, the Supreme Court of Canada dismissed the application for leave filed by Mr. Gravel.

[11] On October 15, 2010, Mr. Gravel commenced a proceeding in the Quebec Superior Court for payment of [TRANSLATION] "notice". Justice Moulin reviewed, *inter alia*, the decisions of the adjudicator, the Federal Court and the Federal Court of Appeal regarding Mr. Gravel's lay-off, and found, at paragraph 27 of his decision, that the matter is *res judicata* in that regard.

[12] On December 5, 2013, Mr. Gravel requested that his two complaints to HRSDC-Labour Program be reopened, alleging that he had obtained new evidence in the litigation before the Superior Court and that those elements show that he was dismissed and not laid off.

[13] On January 14, 2014, Nathalie Johnson, Director, Labour Standards, Labour Program, Department of Employment and Social Development (Director), refused to reopen Mr. Gravel's complaints on the ground that his case is *res judicata*.

[14] Mr. Gravel argues that the Director erred by not considering the elements in his application letter, by not asking him for a copy of the documents that were referred to, by not requesting other newly available documents and by not providing him with the opportunity to be heard. Mr. Gravel admits that his case is *res judicata*, but submits that the new elements establish facts that were unknown until now and that demonstrate that the employer hid the true nature of the termination of employment.

[15] Mr. Gravel is asking the Court to allow his application, to set aside the Director's decision, to allow the adjudication file to be reopened and to order the appointment of an adjudicator to hear the reopening of the investigation and the complaints.

[16] The respondent contends that the Director's decision is reasonable, that the lay-off issue is *res judicata*, that Mr. Gravel had the burden of proving his allegations to the Director and presenting a full record, that the Director was not required to complete the record and that the application to reopen should have been sent to the adjudicator instead.

[17] The Court agrees with the respondent that this is a question of mixed fact and law, and that the Director's decision must be reviewed on the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 53, [2008] 1 SCR 190 (*Dunsmuir*)).

[18] The Court must therefore assess whether the Director's decision falls within a range of possible outcomes in respect of the facts and law.

[19] The Court agrees with the respondent that Mr. Gravel had the burden of proving his allegations to the Director, who was not required to complete the record. Furthermore, the parties agree that no statutory provision governs Mr. Gravel's application to reopen and that it is an exceptional measure. Thus, the elements raised by Mr. Gravel in his application dated December 5, 2013, must be briefly examined to determine whether they are new and of a nature to justify reopening the files.

[20] However, it appears that those elements refer either to facts that arose after the termination of employment or to information that was available when the complaints were reviewed. The documents or elements stated by Mr. Gravel in support of his application to reopen do not in fact introduce any new elements that justify reopening the files.

[21] In short, the Director's decision falls within a range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at paragraph 47).

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed with costs against the applicant in the amount of \$500.

“Martine St-Louis”

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Judge

Certified true translation  
Janine Anderson, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-441-14

**STYLE OF CAUSE:** ROBERT GRAVEL v LABOUR STANDARDS  
BRANCH, LABOUR PROGRAM, EMPLOYMENT  
AND SOCIAL DEVELOPMENT CANADA (ESDC)

**PLACE OF HEARING:** QUÉBEC, QUEBEC

**DATE OF HEARING:** OCTOBER 16, 2014

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ST-LOUIS J.

**DATED:** OCTOBER 28, 2014

**APPEARANCES:**

Robert Gravel FOR THE APPLICANT  
(self-represented)

Nadia Hudon FOR THE RESPONDENT

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