

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160209

Docket: A-465-14

Citation: 2016 FCA 40

**CORAM: RYER J.A.
WEBB J.A.
RENNIE J.A.**

BETWEEN:

CAROLYN BAGNATO

Appellant

and

CANADA POST

Respondent

Heard at Toronto, Ontario, on February 8, 2016.

Judgment delivered at Toronto, Ontario, on February 9, 2016.

REASONS FOR JUDGMENT BY:

RENNIE J.A.

CONCURRED IN BY:

**RYER J.A.
WEBB J.A.**

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REASONS FOR JUDGMENT

RENNIE J.A.

[1] This is an appeal of a judgment of the Federal Court *per* Justice Phelan dated September 24, 2014. In that judgment, the judge denied the appellant's application for judicial review of an April 3, 2013 decision of the Canadian Human Rights Commission (the Commission). The Commission had decided not to deal with the appellant's complaints against the respondent, Canada Post Corporation. I am of the opinion that the appeal should be dismissed.

[2] The appellant alleges that she has been mistreated at her place of work: Canada Post Corporation. Such mistreatment can be the subject of a complaint to the Commission, but also falls within the purview of the collective agreement between Canada Post and the appellant's union. The grievance procedures within the appellant's union had not been exhausted at the time she made her complaint to the Commission.

[3] The *Canadian Human Rights Act* (R.S.C., 1985, c. H-6), paragraph 41(1)(a) states that the Commission should not deal with a complaint if it is of the opinion that the complainant ought to have exhausted other "grievance or review procedures which are reasonably available." On this basis, the Commission decided not to deal with the appellant's complaint. The appellant subsequently applied for judicial review of the Commission's decision, the denial of which is the order under appeal today.

[4] It is well-settled law that decisions of this type are reviewed on a standard of reasonableness. Therefore, the judge was required to examine whether the decision was justifiable, intelligible, and transparent, and also whether it fell within a range of reasonable outcomes. If so, he was required to deny the application, regardless of whether he would have reached a different conclusion than that reached by the Commission.

[5] The judge correctly determined that the Commission's decision to reject the complaint was reasonable. He noted that the Commission applied a number of factors in deciding not to deal with the complaint, all of them concerning the availability of adequate grievance procedures under the collective agreement that as of April 3, 2013, had not been resolved. These factors

demonstrate the reasonableness of the Commission's decision to not deal with the complaint pursuant to paragraph 41(1)(a).

[6] The judge noted that the appellant's argument was primarily aimed at re-arguing her complaint to the Commission, rather than demonstrating that the Commission acted unreasonably. Her submissions before us were also primarily aimed at re-arguing her complaint and her grievances.

[7] Finally, as the Commission itself noted, once the appellant's grievances under the collective agreement have been exhausted, she "may ask the Commission to reactivate the complaint." This addresses any argument that the grievance procedure was inadequate or untimely in addressing the complainant's concerns.

[8] For these reasons the appeal should be dismissed with costs.

"Donald J. Rennie"

J.A.

"I agree
C. Michael Ryer"

"I agree
Wyman W. Webb"

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A JUDGMENT OF THE FEDERAL COURT DATED
SEPTEMBER 24, 2014, DOCKET NO. T-743-13 (2014 FC 914)**

DOCKET: A-465-14

STYLE OF CAUSE: CAROLYN BAGNATO V.
CANADA POST

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 8, 2016

REASONS FOR JUDGMENT BY: RENNIE J.A.

CONCURRED IN BY: RYER J.A.
WEBB J.A.

DATED: FEBRUARY 9, 2016

APPEARANCES:

Carolyn Bagnato
(Self-Represented)

Shaffin A. Dato

APPELLANT

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Canada Post Corporation
Toronto, Ontario

FOR THE RESPONDENT