

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160308

Docket: A-192-15

Citation: 2016 FCA 78

**CORAM: STRATAS J.A.
WEBB J.A.
SCOTT J.A.**

BETWEEN:

DHL EXPRESS (CANADA) LTD.

Appellant

and

FILO SIGLOY

Respondent

Heard at Toronto, Ontario, on February 24, 2016.

Judgment delivered at Ottawa, Ontario, on March 8, 2016.

REASONS FOR JUDGMENT BY:

WEBB J.A.

CONCURRED IN BY:

**STRATAS J.A.
SCOTT J.A.**

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REASONS FOR JUDGMENT

WEBB J.A.

[1] This is an appeal from the decision of Rennie J. (as he then was) dated March 17, 2015 (2015 FC 334). The Federal Court Judge allowed the application for judicial review of the decision of the adjudicator and set aside that decision. The adjudicator had dismissed Mr. Sigloy's complaint of unjust dismissal under section 240 of the *Canada Labour Code*, R.S.C. 1985, c L-2 (the *Code*).

[2] For the reasons that follow I would dismiss this appeal.

I. Background

[3] Mr. Sigloy was an employee of DHL Express (Canada), Ltd. (DHL) from September 20, 2010 until his employment was terminated on October 9, 2012. At the time of his dismissal, no reasons for the dismissal were provided by DHL.

[4] There was a written contract of employment which provided that Mr. Sigloy's employment could be terminated at any time. It also provided for a severance payment if the employment was terminated without cause. DHL paid Mr. Sigloy the amount contemplated by the contract when his employment was terminated.

[5] Mr. Sigloy filed a complaint under the *Code* claiming that he had been unjustly dismissed as an employee. Human Resources and Skills Development Canada (now Employment and Social Development Canada) (HRSDC) requested, pursuant to subsection 241(1) of the *Code*, that DHL provide "a written statement giving the reasons for this dismissal". In response, DHL indicated, in a letter dated December 11, 2012, that his employment was terminated "as a result of poor performance, attendance and attitude".

[6] An adjudicator was appointed and a hearing date was set for October 17, 2013. At the commencement of the hearing, DHL raised a preliminary issue related to whether the adjudicator had the jurisdiction to conduct a hearing on its merits and the parties then submitted written submissions in relation to this question.

[7] The adjudicator, in the opening paragraph of his reasons dated March 20, 2014, described the position of DHL as follows:

...Specifically, the employer maintains that since the dismissal was without cause in accordance with a contract of employment, the adjudicator is without jurisdiction to conduct a hearing on the merits of the unjust dismissal complaint.

[8] The adjudicator determined that he did not have the jurisdiction to hear the complaint and dismissed it.

[9] The Federal Court Judge concluded that, even though there was a contract of employment that contemplated the termination of Mr. Sigloy's employment without cause, the adjudicator should not have dismissed the complaint without conducting a hearing on its merits. While the adjudicator had the right to determine the procedure to be followed in relation to such hearing, Mr. Sigloy was still entitled to a form of hearing on the merits of his complaint. The Federal Court Judge allowed the application for judicial review and set aside the decision of the adjudicator dismissing Mr. Sigloy's complaint.

II. Issue

[10] The issue in this appeal is whether the Federal Court erred in setting aside the adjudicator's decision on the basis that Mr. Sigloy's complaint should not have been dismissed without the adjudicator providing him an opportunity to present evidence and make submissions on the merits of his complaint.

III. Standard of Review

[11] The Supreme Court of Canada succinctly described the standard of review at paragraph 47 of *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559:

...Did the application judge choose the correct standard of review and apply it properly?

[12] The Federal Court Judge, in paragraph 15 of his reasons, stated the issue and the standard of review as follows:

15 In light of developments in the jurisprudence since the hearing of this application, the single question framed before me is whether it is permissible to determine the merits of a complaint under section 240 of the *Code* in the absence of an evidentiary hearing. The standard of review of this question is correctness.

[13] The issue in this case is whether the adjudicator erred in dismissing the complaint without providing an opportunity for Mr. Sigloy to present evidence and make submissions on the merits of his complaint. This decision was based on his interpretation of the *Code*. When an adjudicator is interpreting his or her home statute, reasonableness is presumed to be the appropriate standard (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654 at paragraph 34). However, even if reasonableness is the appropriate standard, in interpreting legislation there may be a narrow range of reasonable possible outcomes (*First Nations Child and Family Caring Society of Canada v. Canada (Attorney General)*, 2013 FCA 75, 444 N.R. 120 at paragraphs 13 to 15).

[14] In my view, whether the standard of review is correctness or reasonableness, the outcome will be the same since the issue is related to whether the adjudicator should have provided Mr.

Sigloy an opportunity to present evidence and make submissions on the merits of his complaint and the range of reasonable possible outcomes under the *Code*, in relation to this question, is narrow.

IV. Analysis

[15] In this case, the adjudicator dismissed Mr. Sigloy's complaint based on the preliminary objection that there was an agreement that provided that he could be dismissed without cause and the compensation that was paid to him was the amount that was contemplated by the agreement and the *Code*. The adjudicator, in the last paragraph of his reasons, noted that Mr. Sigloy's "initial complaint does not allege the dismissal involved discrimination, reprisal or bad faith".

[16] The process under the *Code* is initiated by a person making a complaint. Section 240 of the *Code* provides that:

240(1) Subject to subsections (2) and 242(3.1), any person

(a) who has completed twelve consecutive months of continuous employment by an employer, and

(b) who is not a member of a group of employees subject to a collective agreement,

may make a complaint in writing to an inspector if the employee has been dismissed and considers the dismissal to be unjust.

240(1) Sous réserve des paragraphes (2) et 242(3.1), toute personne qui se croit injustement congédiée peut déposer une plainte écrite auprès d'un inspecteur si :

a) d'une part, elle travaille sans interruption depuis au moins douze mois pour le même employeur;

b) d'autre part, elle ne fait pas partie d'un groupe d'employés régis par une convention collective.

[17] As a result of Mr. Sigloy making his complaint, an adjudicator was appointed. The provisions of subsection 242(2) of the *Code* were then applicable:

242(2) An adjudicator to whom a complaint has been referred under subsection (1)

(a) shall consider the complaint within such time as the Governor in Council may by regulation prescribe;

(b) shall determine the procedure to be followed, but shall give full opportunity to the parties to the complaint to present evidence and make submissions to the adjudicator and shall consider the information relating to the complaint; and

(c) has, in relation to any complaint before the adjudicator, the powers conferred on the Canada Industrial Relations Board, in relation to any proceeding before the Board, under paragraphs 16(a), (b) and (c).

242(2) Pour l'examen du cas dont il est saisi, l'arbitre :

a) dispose du délai fixé par règlement du gouverneur en conseil;

b) fixe lui-même sa procédure, sous réserve de la double obligation de donner à chaque partie toute possibilité de lui présenter des éléments de preuve et des observations, d'une part, et de tenir compte de l'information contenue dans le dossier, d'autre part;

c) est investi des pouvoirs conférés au Conseil canadien des relations industrielles par les alinéas 16a), b) et c).

[18] As noted by this court in *Wilson v. Atomic Energy of Canada*, 2015 FCA 17, 467 N.R. 201 (at paragraphs 93 to 99), even though an employee has been paid severance pay in accordance with an agreement and the *Code*, it is still possible that an adjudicator may find that the dismissal was unjust for the purposes of the *Code*.

[19] As a result, I agree that the complaint should not have been dismissed without Mr. Sigloy and DHL having been given an opportunity to present evidence and make submissions to the adjudicator on the merits of the complaint. The only submissions that were made in this case

related to the preliminary objection raised by DHL. While the procedure to be followed for presenting and making submissions on the merits of this complaint is to be determined by the adjudicator, the lack of any opportunity to present evidence and make submissions on the merits of the complaint leads to the conclusion that the decision of the adjudicator to dismiss this complaint was unreasonable, which would also mean that it was not correct.

[20] As a result, I would dismiss the appeal, with costs.

"Wyman W. Webb"

J.A.

"I agree.

David Stratas J.A."

"I agree.

A.F. Scott J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-192-15

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE RENNIE
DATED MARCH 17, 2015 DOCKET NUMBER T-904-14)**

STYLE OF CAUSE: DHL EXPRESS (CANADA) LTD.
v. FILO SIGLOY

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 24, 2016

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: STRATAS J.A.
SCOTT J.A.

DATED: MARCH 8, 2016

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