

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160418

Docket: A-444-15

Citation: 2016 FCA 117

**CORAM: DAWSON J.A.
NEAR J.A.
BOIVIN J.A.**

BETWEEN:

RONALD PHIPPS

Appellant

and

CANADA POST CORPORATION

Respondent

Heard at Toronto, Ontario, on April 12, 2016.

Judgment delivered at Ottawa, Ontario, on April 18, 2016.

REASONS FOR JUDGMENT BY:

NEAR J.A.

CONCURRED IN BY:

**DAWSON J.A.
BOIVIN J.A.**

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REASONS FOR JUDGMENT

NEAR J.A.

I. Introduction

[1] This is an appeal from a decision of Justice Gleeson of the Federal Court dated September 15, 2015 and reported as 2015 FC 1080 in which he dismissed an application for judicial review of a decision of the Canada Human Rights Commission (the Commission) to dismiss the appellant's complaint against Canada Post Corporation (Canada Post).

II. Background

[2] The appellant, Ronald Phipps, identifies as an African Canadian male. He was hired as a letter carrier for Canada Post in December 2002, and was a member of the Canadian Union of Postal Workers (the CUPW) while he was employed at Canada Post. On November 8, 2013, the appellant's employment with Canada Post ended. On or about November 28, 2013, he filed a complaint with the Commission alleging that he was treated in an adverse and differential manner by his supervisors and was subjected to workplace harassment. Canada Post provided a written response to the appellant's complaint. On May 21, 2014, a Commission investigator advised the appellant that she would be investigating his complaint. The appellant provided the Commission investigator with several written submissions throughout the investigation.

III. Decision Under Review

[3] On November 6, 2014, the Commission investigator issued an Investigation Report recommending the dismissal of the appellant's complaints pursuant to subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the Act). The Investigation Report examined the three areas in which the appellant alleged that he had been discrimination against on a prohibited ground. The first was the allegation that the appellant received adverse or differential treatment due to his race, colour, national or ethnic origin and/or sex. The Investigation Report addressed five instances of such treatment alleged by the appellant, and concluded that the evidence did not support the appellant's claims in each instance. The second allegation was that the appellant was tricked into resigning. The Investigation Report concluded that the evidence demonstrated that the appellant had voluntarily resigned to access the commuted value of his pension. The third alleged ground was that Canada Post failed to provide a harassment-free work environment. The Investigation Report noted that it appeared the

appellant had not reported the incident of racial slurs to which he claimed he had been subjected, to either management or the CUPW, and that in the alternative, the evidence did not support that the incident occurred.

[4] The appellant provided submissions on the Investigation Report on November 11, 2014. On January 15, 2015, the Commission issued a decision letter dismissing the appellant's complaint pursuant to subparagraph 44(3)(b)(i) of the Act and closing the file. Subparagraph 44(3)(b)(i) states that on receipt of an Investigation Report, the Commission "shall dismiss the complaint to which the report relates if it is satisfied that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted".

[5] The Commission's decision letter advised the appellant that prior to rendering the decision, the Commission reviewed both the Investigation Report and the appellant's response thereto. The reasons given for dismissal in the letter were that: (1) the evidence did not support that the appellant was treated in an adverse differential manner because of his national or ethnic origin, colour or sex; (2) the evidence did not show that the appellant's employment was terminated; and (3) the evidence did not show that the appellant was subjected to harassment in the workplace because of his national or ethnic origin, colour or sex.

[6] Pursuant to *Sketchley v. Canada (Attorney General)*, 2005 FCA 404 at para. 37, 344 N.R. 257, because the Commission's decision letter does not provide detailed reasons, the Investigation Report constitutes the reasons for the Commission's decision. The judge dismissed the appellant's application for judicial review and upheld the decision of the Commission.

IV. Analysis

[7] The appellant is self-represented and in large measure makes the same arguments before this Court that he made both before the Commission and the Federal Court. Namely, he submits that he was subjected to discriminatory treatment based on race, colour, national or ethnic origin and/or sex with respect to the issue of payment for overtime work, the use of his bicycle for work purposes, and an incident of a racial slur allegedly directed at him. Based upon the evidence, the appellant essentially continues to disagree with the findings of fact with respect to these and other issues contained in the Investigation Report. He continues to disagree with the conclusion reached by the Commission based upon these findings of fact and also disagrees with the Federal Court's decision upholding these conclusions. The appellant invites this Court to re-weigh the evidence and come to a different conclusion from that of the Commission which was upheld by the Federal Court. This is not the role of this Court on appeal. Rather, the appellant must convince the Court that the Commission committed a reviewable error.

[8] Despite the ardent submissions by the appellant and notwithstanding his genuine belief as to his position on the various complaints he has put forward, I am of the view that the appellant has not identified any reviewable error in the Commission's decision and Investigation Report, nor in the Federal Court's judicial review of that decision. Further, I do not see any reviewable error in the procedural issues, i.e., the limit on the length of the appellant's complaint and the decision not to interview all of the appellant's suggested witnesses.

V. Conclusion

[9] I would therefore dismiss the appeal with costs in this Court payable to the respondent in the amount of \$300 inclusive of tax and disbursements.

"David G. Near"

J.A.

"I agree.

Eleanor R. Dawson J.A."

"I agree.

Richard Boivin J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE GLEESON OF
THE FEDERAL COURT OF CANADA, DATED SEPTEMBER 15, 2015, DOCKET
NO. T-127-15**

DOCKET: A-444-15

STYLE OF CAUSE: RONALD PHIPPS v.
CANADA POST CORPORATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 12, 2016

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: DAWSON J.A.
BOIVIN J.A.

DATED: April 18, 2016

APPEARANCES:

Ronald Phipps FOR THE APPLICANT
(ON HIS OWN BEHALF)

Shaffin A. Dato FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shaffin A. Dato FOR THE RESPONDENT
Legal Counsel
Canada Post Corporation