

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160511

Docket: A-366-15

Citation: 2016 FCA 148

**CORAM: DAWSON J.A.
RENNIE J.A.
GLEASON J.A.**

BETWEEN:

CANADA REVENUE AGENCY

Applicant

and

**JEFFREY ALAN CLOUGH, DIAN ROBSON
AND EDWARD LEUNG**

Respondents

Heard at Ottawa, Ontario, on May 11, 2016.

Judgment delivered from the Bench at Ottawa, Ontario, on May 11, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

GLEASON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on May 11, 2016).

GLEASON J.A.

[1] In this application for judicial review, the applicant, the Canada Revenue Agency [the CRA], seeks to set aside the May 22, 2015 decision of an adjudicator of the Public Service

Labour and Employment Relations Board [the PSLERB], upholding the respondents' grievances (2015 PSLREB 48).

[2] In their grievances, the respondents sought severance pay based on their years of service with the CRA and in the British Columbia public service, where they had worked as auditors before being transferred to the CRA. They were so transferred in 2010 in conjunction with plans to develop a harmonized sales tax [HST] in British Columbia. Although the HST was not implemented following a 2011 provincial referendum in which the proposal for the HST was rejected by voters, the respondents were given the option of remaining employed with the CRA and chose to do so.

[3] Their grievances arose under a new provision in the 2012-2014 collective agreement between the CRA and the respondents' bargaining agent, the Professional Institute of the Public Service of Canada [PIPSC]. This new collective agreement provision capped the accrual of severance pay entitlements on retirement or resignation to the amounts accrued to the effective date of the new collective agreement and afforded employees the option of electing immediate payment of their accrued severance pay. The relevant collective agreement provisions establish severance pay entitlement with reference to the number of years of an employee's "continuous employment". That term is defined in article 2.01 of the collective agreement as having the same meaning as in the CRA's Terms and Conditions of Employment Policy [the Policy].

[4] The Policy defines "continuous employment" as "periods of service in the public service", as defined in the *Public Service Superannuation Act*, R.S.C. 1985, c. P-36 [the *PSSA*].

The *PSSA* contains a definition of “public service”, which is defined in section 3 of that Act as essentially meaning employment with any federal department or board, commission or corporation listed in Schedule I of the *PSSA*. The CRA is listed in Schedule I to the *PSSA*, and its employees are therefore entitled to pensions under the *PSSA*. The *PSSA*, however, contains other provisions that allow for the recognition of periods of service with other organizations in respect of entitlements under the *PSSA*. By virtue of these provisions, the grievors were entitled to have their years of service in the British Columbia public service recognized under the *PSSA*, with the result that their *PSSA* pensions would be based on their service with both British Columbia and the CRA.

[5] In her decision, the PSLREB adjudicator found the provisions defining “continuous employment” in the collective agreement to be ambiguous and therefore had regard to extrinsic evidence to interpret the term. She further found that there was support in the evidence for the view that “continuous employment”, with reference to the grievors’ severance pay entitlements, was to be interpreted as including both their years of service in the British Columbia public service and with the CRA. This evidence included statements in the human resources agreements between the CRA and the Government of British Columbia, in a memorandum of understanding between the CRA and the PIPSC as well as several statements made by members of CRA management to the grievors and the PIPSC leadership. To a greater or lesser degree, each of these statements indicated that transferring employees’ entitlements to service-related benefits would be based on their total years of service with both the British Columbia public service and the CRA.

[6] It is common ground between the parties that the adjudicator's decision is reviewable on the reasonableness standard, as, indeed, has been firmly established by the case law of this Court: see, for example, *Amos v. Canada (Attorney General)*, 2011 FCA 38 at paragraphs 29-32, 417 N.R. 74; *Bahniuk v. Canada (Attorney General)*, 2016 FCA 127 at paragraph 14, 2016 CarswellNat 1429.

[7] The applicant argues that the adjudicator's determination that it was appropriate to consider the extrinsic evidence was unreasonable and also submits that it was unreasonable to conclude that such evidence demonstrated that "continuous employment" was to be interpreted in the manner the grievors suggested. The applicant says that the terms of the collective agreement were clear and must inevitably lead to the opposite conclusion.

[8] With respect, we disagree. We see nothing unreasonable in holding that the relevant provisions in the collective agreement, the Policy and the *PSSA* are ambiguous and, therefore, find that it was not unreasonable for the adjudicator to have considered the extrinsic evidence. Simply put, the concept of "continuous employment" is far from clear on its face and its ambiguity is heightened by the fact that the service in question may be counted under the *PSSA* as continuous service for purposes of pension entitlement. As the Policy ties the collective agreement definition of "continuous employment" to the *PSSA*, and the *PSSA* recognizes the disputed service for pension purposes, there was ample basis for a finding of ambiguity in this case. The adjudicator's holding on this point is thus not unreasonable.

[9] Nor is her assessment of the extrinsic evidence unreasonable. There was ample evidence to support the grievors' interpretation, and it was therefore open to the adjudicator to interpret "continuous employment", for purposes of calculating the grievors' severance pay entitlement, as including their years of employment in the British Columbia public service and with the CRA.

[10] It follows that the adjudicator's determination cannot be disturbed and that this application will therefore be dismissed with costs, fixed in the all-inclusive amount of \$3000.00.

"Mary J.L. Gleason"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-366-15

STYLE OF CAUSE: CANADA REVENUE AGENCY v.
JEFFREY ALAN CLOUGH, DIAN
ROBSON AND EDWARD LEUNG

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MAY 11, 2016

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GLEASON J.A.

DELIVERED FROM THE BENCH BY: GLEASON J.A.

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