

Federal Court of Appeal



Cour d'appel fédérale

Date: 20181106

Docket: A-405-17

Citation: 2018 FCA 201

[ENGLISH TRANSLATION]

**CORAM: GAUTHIER J.A.
BOIVIN J.A.
RIVOALEN J.A.**

BETWEEN:

CONSEIL DES INNUS DE PESSAMIT

Appellant

and

GITHANE BELLEFLEUR

Respondent

Hearing held at Québec, Quebec, on November 6, 2018.

Judgment delivered from the bench at Québec, Quebec, on November 6, 2018.

**REASONS FOR JUDGMENT OF THE
COURT BY:**

BOIVIN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Québec, Quebec, on November 6, 2018)

BOIVIN J.A.

[1] The Conseil des Innus de Pessamit, the Appellant, is appealing from a judgment by Justice Locke of the Federal Court (the judge) rendered on November 8, 2017 (2017 FC 1016). The judge dismissed the application for judicial review of an adjudicator's decision. On October 6, 2016, the adjudicator found that the Respondent, Ms. Bellefleur, had been wrongfully dismissed.

[2] In this appeal, this Court must consider whether the judge chose the proper standard of review and whether he applied it correctly. Also, since we are dealing with the appeal of a Federal Court judgment on judicial review, we must focus our attention on the adjudicator's decision (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559).

[3] It emerged from the hearing before this Court that the Appellant did not raise before the adjudicator the issue of the adjudicator's bias, nor did it present most of the arguments that it has raised before us.

[4] In this case, we are of the opinion that the judge did not err in his choice of standards of review and that he correctly applied them.

[5] The Appellant submits that the adjudicator did not have jurisdiction under section 242(3) of the *Canada Labour Code*, R.S.C. 1985, c. L-2 because the case involved the elimination of a position. However, in addition to the matter of whether the issue of jurisdiction was raised at the hearing before the adjudicator, there is the fact that the evidence adduced shows that the administrative reform contemplated had not been completed when Ms. Bellefleur was dismissed from her position in June 2015. In fact, during the period from June 2015 to January 2016, Ms. Bellefleur's former social services position was held on an acting basis by Ms. St-Onge. Therefore, under these circumstances, and absent the elimination of the position held by Ms. Bellefleur, the adjudicator had the required jurisdiction to deal with the matter.

[6] Somewhat contradictorily, the Appellant also submits that certain documents excluded by the adjudicator would have enabled it to prove the general state of social services. More particularly, the Appellant reproaches the adjudicator with excluding the evidence regarding the conflict situation that allegedly existed in Ms. Bellefleur's sector. However, the adjudicator found that the alleged conflict situation was not among the grounds listed by the Appellant. On the basis of the record and all of the circumstances, it was reasonable for the adjudicator to conclude as he did on this matter of evidence that is central to his jurisdiction and, therefore, we cannot find that there was a violation of the principles of natural justice.

[7] The Appellant's argument that medical documents were excluded cannot be accepted either, because the adjudicator refers in his reasons to Ms. Bellefleur's psychological state (adjudicator's reasons paras. 43 to 45).

[8] Lastly, we are also of the opinion that it was open to the adjudicator to interpret as he did Ms. Bellefleur's letter of October 19, 2015, to Jean-Claude Vollant, the Director General. On the one hand, we can only note that the hearing before the adjudicator was not recorded and that there is no transcript of the testimony, and on the other hand, the adjudicator had the advantage of hearing and assessing Ms. Bellefleur's testimony at the hearing.

[9] For these reasons, the appeal will be dismissed with costs.

“Richard Boivin”

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-405-17

STYLE OF CAUSE: CONSEIL DES INNUS DE
PESSAMIT v. GITHANE
BELLEFLEUR

PLACE OF HEARING: QUÉBEC, QUEBEC

DATE OF HEARING: NOVEMBER 6, 2018

**REASONS FOR JUDGMENT OF THE COURT
BY:** GAUTHIER J.A.
BOIVIN J.A.
RIVOALEN J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

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