

Date: 20081016

Docket: A-43-08

Citation: 2008 FCA 306

**CORAM: DÉCARY J.A.
NOËL J.A.
TRUDEL J.A.**

BETWEEN:

ABDOURAHMAN MOHAMED SADICK

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on October 15, 2008.

Judgment delivered at Ottawa, Ontario, on October 16, 2008.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

**DÉCARY J.A.
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REASONS FOR JUDGMENT

TRUDEL J.A.

Issue

[1] The appellant filed two complaints with the Canadian Human Rights Commission, alleging on each occasion having been the victim of discrimination based on his race, colour and national and ethnic origin, in violation of sections 7, 10 and 14 of the *Canadian Human Rights Act* (R.S.C. 1985, c. H-6) (the Act).

[2] In the first complaint, dated May 26, 2004 (Supplementary Appeal Book, tab 3, page 1, file 20040511), the appellant claimed having been the victim of harassment and differential treatment in his workplace. In the second, dated August 30, 2005 (Supplementary Appeal Book, tab 15, page 2, file 20051699), he alleged having been dismissed on the prohibited grounds stated above.

[3] On December 12, 2006, the Commission dismissed those two complaints and closed its files following the investigator's reports (Supplementary Appeal Book, tab 3, page 6, file 20040511; Supplementary Appeal Book, tab 15, page 16, file 20051699), since the evidence gathered did not support the allegations of the appellant (Supplementary Appeal Book, tab 16, page 1).

[4] The appellant failed in his applications for judicial review, before the Federal Court, of those two decisions by the Commission (2007 FC 1309, Pinard J. [judge]). Therefore, he is appealing before this Court.

[5] Once again, as he did before the Federal Court, the appellant "is essentially complaining that procedural fairness was not observed in this matter" (Reasons for Judgment, paragraph 11). More specifically, he accuses the judge of having concluded that the Commission's investigation was carried out in a neutral and rigorous fashion despite the fact that, in his opinion, the investigator failed to [TRANSLATION] "question certain crucial witnesses who were aware of the events that were occurring in the workplace, namely the Ombudsman, the union representatives, the Minister's representative responsible for the campaign against harassment in the workplace and two of the three directors general" (Appellant's Memorandum of Fact and Law, at paragraph 4), and failed to

take into account all of the information that the appellant had provided regarding his performance (*ibid.*, paragraph 11) and his disability (*ibid.*, paragraph 19).

Standard of Review

[6] This Court's intervention will not be justified in the absence of a palpable and overriding error by the judge responsible for reviewing the decisions of the Commission (*Housen Nikolaisen*, 2002 SCC 33 at paragraph 36) and its application of procedural fairness to the facts that were presented to it.

Analysis

[7] We are of the opinion that this appeal must be dismissed for the following reasons.

[8] In this case, the Commission gave effect to the investigator's exhaustive reports, which followed the two complaints of the appellant.

[9] To examine the first complaint, the investigator chose, among the witnesses suggested by the appellant, those who were [TRANSLATION] "the most relevant, as well as a few witnesses chosen at random" (first report, tab 3, page 10, paragraph 5). She also consulted with nearly a dozen persons who had regular professional contact with the appellant as part of his duties.

[10] The judge had reason to emphasize that “the witnesses proposed by [the appellant] would not at all have contributed to the investigation, because they had no direct knowledge of the facts alleged” by the appellant (Reasons for Judgment, paragraph 14). Not being involved in the events leading to the complaints under consideration, these witnesses truly could only have stated what the appellant himself had reported to them.

[11] As for the second complaint regarding the appellant’s dismissal, the judge noted with satisfaction that the investigator “did not only investigate [the appellant’s] performance, but that she also determined that the prohibited grounds he alleged did not play a role in the decision not to renew his contract” (Reasons for Judgment, paragraph 15).

[12] We cannot agree with the appellant’s argument that the investigator [TRANSLATION] “did not examine whether the employer discharged its duty of reasonable accommodation of his disability” related to problems of stress and anxiety he experienced in his workplace (Appellant’s Memorandum of Fact and Law, paragraph 42).

[13] Indeed, we are persuaded by an attentive review of the case that the investigator took the accommodation measures put in place by the employer into account before making her recommendations—among others, offer of mediation (first report at paragraphs 83 et seq.) assignment of new duties and a new supervisor (first report at paragraph 119); extension of his term appointment in order to offer the appellant a chance to fulfill the conditions of his position (Supplementary Appeal Book, tab 1, letter dated March 24, 2004)—concluding, however, that

[TRANSLATION] “the same performance and attendance problems were apparent” (first report, paragraph 119).

[14] As stated by this Court in *Tahmourpour v. Canada (Solicitor General)*, 2005 FCA 113:

[39] Any judicial review of the Commission's procedure must recognize that the agency is master of its own process and must be afforded considerable latitude in the way that it conducts its investigations. An investigation into a human rights complaint cannot be held to a standard of perfection; it is not required to turn every stone. The Commission's resources are limited and its case load is heavy. It must therefore balance the interests of complainants in the fullest possible investigation and the demands of administrative efficacy: see, for example, *Slattery v. Canada (Human Rights Commission)* at para. 55; Canadian Human Rights Commission, *Annual Report for 2001* (Ottawa: Minister of Public Works and Government Services, 2002), p. 33.

[15] Contrary to the decision cited above, in this case, the appellant did not demonstrate that this is an exceptional case where the Commission adopted the recommendations made by the investigator following a faulty investigation in which she had failed to examine “obviously crucial evidence” (*ibid.* at paragraph 40).

Conclusion

[16] It was thus open to the judge to conclude as he did, since the investigator’s recommendations were supported by the evidence she had gathered.

[17] Therefore, the appellant has not demonstrated an error of law or fact warranting our Court's intervention, and the appeal will be dismissed with costs.

“Johanne Trudel”

J.A.

“I agree.

Robert Décary J.A.”

“I agree.

Marc Noël J.A.”

Certified true translation
Sarah Burns

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-43-08

APPEAL FROM THE JUDGMENT OF JUSTICE PINARD OF THE FEDERAL COURT (2007 FC 1309)

STYLE OF CAUSE: Abdourahman Mohamed Sadick
v. Attorney General of Canada

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 15, 2008

REASONS FOR JUDGMENT BY: TRUDEL J.A.

CONCURRED IN BY: DÉCARY J.A.
NOËL J.A.

DATED: October 16, 2008

APPEARANCES:

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