

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20081112

Docket: A-75-08

Citation: 2008 FCA 351

**CORAM: NOËL J.A.
BLAIS J.A.
PELLETIER J.A.**

BETWEEN:

YVES NANTEL

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Hearing held at Ottawa, Ontario, on November 12, 2008.

Judgment delivered from the bench at Ottawa, Ontario, on November 12, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Ottawa, Ontario, on November 12, 2008)

NOËL J.A.

[1] This is an appeal from a decision of Justice Pinard, who granted an application for judicial review filed by the Attorney General and set aside the decision of an adjudicator of the Public Service Labour Relations Board ordering the payment of interest on a debt resulting from a correction to the salary paid to the appellant, Yves Nantel.

[2] Justice Pinard concluded that subsection 21(1) and section 96.1 of the *Public Service Staff Relations Act*, R.S.C. (1985), c. P-35 (the PSSRA), did not provide an exception to the common law rule that the Crown is not liable for interest on monies due, and that the adjudicator therefore had no authority to order that Mr. Nantel be paid interest on the wages his employer had neglected to pay him.

[3] At the same time, Justice Pinard dismissed the application for judicial review, filed this time by Mr. Nantel, challenging the adjudicator's decision insofar as it limited the payment of interest to the period between 1993 and 1997 and failed to provide for the payment of compound interest. In this appeal, the appellant puts in issue the disposition of the two applications for judicial review.

[4] Regarding the first application for judicial review, we are of the view that Justice Pinard correctly held that the principle of Crown immunity still exists at the federal level. We are also of the view that Justice Pinard correctly held that the PSSRA did not provide an exception to that immunity, essentially for the reasons he provided. We draw this conclusion by applying the standard of correctness, as Justice Pinard appears to have done.

[5] The appellant argues that the standard applicable to the review of the adjudicator's decision is that of reasonableness. According to him, even if the adjudicator's decision is not the right decision in law (i.e. correct), it is not in itself unreasonable.

[6] It is unnecessary to address this question since, in our opinion, the amendments brought about by the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 (PSLRA), which came into force on April 1, 2005, render the conclusion reached by Justice Pinard unavoidable, regardless of the standard of review applicable to the adjudicator's decision. Indeed, the PSLRA provides at paragraph 226(1)(i) that the adjudicator may “award interest in the case of grievances involving termination, demotion, suspension or financial penalty [emphasis added] at a rate and for a period that the adjudicator considers appropriate”.

[7] When this amendment is considered in light of the consistent line of case law that Justice Pinard relies on in his reasons, which has interpreted the PSSRA, without exception, in the same way for over 30 years, it demonstrates unequivocally that Parliament was indeed aware of the state of the law under the PSSRA, and that as of April 1, 2005, it chose to waive the benefit of the common law rule in the specific cases provided at paragraph 226(1)(i). It therefore follows that the common law rule remains in effect for all other cases. The amendment cannot be construed otherwise.

[8] With this in mind, the adjudicator's conclusion that under the former Act, the PSSRA, Parliament had already, though not expressly, provided a non-exhaustive list of exceptions to the common law rule becomes untenable. We believe it useful to add that the appellant's claim would be no more admissible under the new Act, the PSLRA, since none of the four exceptions provided at paragraph 266(1)(i) would apply.

[9] Since the adjudicator had no authority to order the payment of interest, there is no need for us to deal with the second part of the appeal.

[10] The appeal will be dismissed with costs.

“Marc Noël”

J.A.

Certified true translation
Sarah Burns

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-75-08

(APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE PINARD OF THE FEDERAL COURT DATED JANUARY 25, 2008, DOCKET T-1362-07).

STYLE OF CAUSE: Yves Nantel and Attorney General of Canada

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: November 12, 2008

REASONS FOR JUDGMENT OF THE COURT BY: Noël, Blais and Pelletier JJ.A.

DELIVERED FROM THE BENCH BY: Noël J.A.

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