

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20101108

Docket: A-152-09

Citation: 2010 FCA 299

**CORAM: EVANS J.A.
SHARLOW J.A.
TRUDEL J.A.**

BETWEEN:

OPASKWAYAK CREE NATION

Appellant

and

DEREK A. BOOTH AND BERNICE YOUNG (GENAILLE)

Respondents

Heard at Winnipeg, Manitoba, on November 8, 2010.

Judgment delivered from the Bench at Winnipeg, Manitoba, on November 8, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW, J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Winnipeg, Manitoba, on November 8, 2010)

SHARLOW J.A.

[1] This is an appeal of a decision of Justice Dawson (2009 FC 225) dismissing an application for judicial review of the decision of an adjudicator in relation to a wrongful dismissal complaint by the respondent. The adjudicator found the respondent's complaint to be well founded and ordered the respondent to be reinstated with pay from the date of the termination of her employment.

[2] Having considered the appellant's submissions and the record, we find no error of law or any other basis for appellate intervention.

[3] We consider it necessary to consider only two of the grounds of appeal. First, in this Court the appellant stressed that the adjudicator did not put his mind to the question of all of the available statutory remedies following adjudication, and in particular did not consider whether a lesser remedy than reinstatement with full compensation would be appropriate. It is true that the adjudicator did not mention in his reasons the question of whether a remedy other than reinstatement with full compensation would be appropriate. However, we cannot discern from the record whether that point was argued before him. We see no basis in the record for concluding that Justice Dawson should have set aside the adjudicator's decision on this ground.

[4] Second, the appellant argued that the adjudicator's decision was fatally flawed by his failure to stop the respondent, who was self represented before the adjudicator, from giving evidence in the course of her closing submissions. On this point, we agree with Justice Dawson that the appellant failed to establish that any material finding of fact made by the adjudicator was not based on evidence properly in the record.

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

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-152-09

**APPEAL FROM AN ORDER OF THE FEDERAL COURT DATED MARCH 4, 2009,
DOCKET NO. T-1000-08.**

STYLE OF CAUSE: OPASKWAYAK CREE NATION v.
DEREK A. BOOTH AND BERNICE
YOUNG (GENAILLE)

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: November 8, 2010

REASONS FOR JUDGMENT OF THE COURT BY: EVANS, SHARLOW, TRUDEL
JJ.A.

DELIVERED FROM THE BENCH BY: Sharlow, J.A.

APPEARANCES:

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Pamela Reilly FOR THE RESPONDENT,
BERNICE YOUNG (GENAILLE)

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