

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20111006

Docket: A-74-11

Citation: 2011 FCA 276

**CORAM: EVANS J.A.
LAYDEN-STEVENSON J.A.
STRATAS J.A.**

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE
and INTRIA ITEMS INC.**

Appellants

and

MURUGANANDARAJAH MUTHIAH

Respondent

Heard at Toronto, Ontario, on October 6, 2011.

Judgment delivered from the Bench at Toronto, Ontario, on October 6, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

LAYDEN-STEVENSON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on October 6, 2011)

LAYDEN-STEVENSON J.A.

[1] The respondent was employed by the appellants, Canadian Imperial Bank of Commerce and a related company Intria Items Inc. (collectively CIBC), for approximately ten years. CIBC

terminated his employment allegedly because his position had been discontinued under a national restructuring program. The respondent lodged an unjust dismissal complaint under the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the Code).

[2] Relying upon paragraph 242(3.1)(a) of the Code, CIBC took the position that the respondent's complaint should be dismissed on the basis that the termination resulted from a discontinuance of function and consequently was excluded from adjudication. The adjudicator determined that the exemption did not apply because CIBC had not met its onus of showing that there had been a discontinuance of the respondent's function.

[3] CIBC applied to the Federal Court for judicial review of the adjudicator's decision. Justice Barnes (the judge) determined that the adjudicator correctly understood the legal test applicable to subsection 242(3.1) of the Code and that a *bona fide* decision to eliminate a position through the re-assignment of duties to others would fall within the provision. After analysing the various grounds of review and arguments advanced by CIBC, the judge found that the adjudicator's decision "is thorough, thoughtful, well-supported by the evidence, and contains no discernable errors of law." The judge dismissed the application (2011 FC 77). CIBC now appeals to this Court.

[4] We are of the view that the appeal must be dismissed. CIBC essentially seeks a re-hearing and re-determination of the same case it unsuccessfully put to the adjudicator and the judge. That is not our function. CIBC has failed to demonstrate any error on the part of the judge that warrants our intervention. Although we are of the view that the standard of review applicable to

the adjudicator's interpretation of subsection 242(3.1) of the Code is reasonableness (see: *Attorney General of Canada v. Public Service Alliance of Canada*, 2011 FCA 257 at paragraph 29 and also *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 54), in all other respects, we agree with the judge's decision for substantially the reasons he gave.

[5] In our opinion, this case fundamentally turns on its facts; the adjudicator's conclusion that she was not satisfied that CIBC had discharged its burden proof was reasonable on the evidence before her.

[6] The appeal will be dismissed with costs.

“Carolyn Layden-Stevenson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-74-11

**(APPEAL FROM A JUDGMENT OF THE FEDERAL COURT OF JUSTICE BARNES
DATED JANUARY 21, 2011, DOCKET NO. T-25-10)**

STYLE OF CAUSE: *CANADIAN IMPERIAL BANK OF
COMMERCE and INTRIA ITEMS INC. v.
MURUGANANDARAJAH MUTHIAH*

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 6, 2011

REASONS FOR JUDGMENT OF THE COURT BY: (EVANS, LAYDEN-STEVENSON,
STRATAS J.J.A.)

DELIVERED FROM THE BENCH BY: LAYDEN-STEVENSON J.A.

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