Federal Court of Appeal | Cour d'appel fédérale

Date: 20211117

Docket: A-301-20

Citation: 2021 FCA 220

[ENGLISH TRANSLATION]

CORAM: **PELLETIER J.A.**
DE MONTIGNY J.A.
LEBLANC J.A.

BETWEEN:

DIMITRI GREKOU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Hearing held at Montreal, Quebec, on November 16, 2021.

Judgment delivered at Montreal, Quebec, on November 17, 2021.

REASONS FOR JUDGMENT BY: DE MONTIGNY J.A.

CONCURRED IN BY: PELLETIER J.A.
LEBLANC J.A.

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REASONS FOR JUDGMENT

DE MONTIGNY J.A.

[1] The applicant, Mr. Grekou, is seeking judicial review of a decision rendered by the Federal Public Sector Labour Relations and Employment Board (the Board) on November 2, 2020 (2020 FPSLREB 94), in which it dismissed his application for an extension of time to file a grievance against his employer, the Department of National Defence, following his rejection on probation on January 3, 2018.

[2] Following this rejection, the applicant contacted his bargaining agent with the intent to file a grievance. The collective agreement provides that such a grievance must be filed within 25 days of the action underlying it. When the bargaining agent failed to file the grievance within the time limit, the applicant filed a complaint with the Board on March 8, 2018, for failure to represent; the employer, of course, was not a party to this dispute, which was between the applicant and his union. This complaint was ultimately settled between the parties on November 19, 2018.

[3] On March 26, 2018, the bargaining agent informed the applicant's lawyer that the union's participation was not required to file the grievance; it also forwarded a draft grievance to the applicant's lawyer on April 5, 2018. The applicant admitted that he had been informed of these communications by his lawyer, but he decided to wait until his complaint against his union was resolved before filing his grievance. In the end, he did not file his grievance until 10 months after his rejection, namely, on December 10, 2018. The employer dismissed the grievance at the final level on January 31, 2019, on the basis that it had not been filed within the prescribed time. The applicant subsequently referred his grievance to adjudication on February 15, 2019.

[4] The employer made two preliminary objections to this grievance: the first on the grounds that it had been filed late and the second because a rejection on probation cannot be referred to adjudication under section 211 of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2. The applicant replied to the first objection by filing an application for an extension of time with the Board on July 17, 2020, pursuant to paragraph 61(b) of the *Federal Public Sector Labour Relations Regulations*, SOR/2005-79.

[5] The decision that is the subject of this judicial review addresses only the first of the two objections raised by the employer. At the end of a detailed decision, the Board allowed the employer's objection, dismissed the application for an extension, and closed the file.

[6] In reaching this conclusion, the Board relied on the criteria that it had set out in its decision in *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1, to decide on an application for an extension of time. These criteria are as follows: (1) clear, cogent and compelling reasons for the delay; (2) the length of the delay; (3) the due diligence of the grievor; (4) balancing the injustice to the grievor against the prejudice to the employer in granting the extension; and (5) the chances of success of the grievance. Applying these criteria, the Board expressed the view that the delay was quite significant, that the applicant had not exercised due diligence, and that he had not provided clear and compelling reasons to explain his delay in filing a grievance. With respect to this last point, the Board recognized that the failure to file the grievance before March 26 or April 5 could perhaps be explained, but that this was not the case for the subsequent delay. The complaint against the bargaining agent could not constitute a sufficient explanation insofar as the grievance procedure was separate from the complaint. Furthermore, the support of the union was not required to file the grievance. The only criterion in the applicant's favour was the prejudice suffered; however, the Board deemed that this was not sufficient for him to succeed, on the understanding that the employer is also entitled to expect that a file will be closed within a reasonable period of time.

[7] In his written and oral submissions before us, the applicant did not question the criteria used by the Board to assess his application for an extension, but rather attempted to argue that

the Board had erred in concluding that he had not provided clear, cogent and compelling reasons to justify his delay in filing the grievance. He emphasized the union's negligence and the strategic choice that he had made to move forward with his complaint against the union, believing, in good faith, that a decision in his favour in this matter would have made it easier for him to obtain an extension of time.

[8] Unfortunately, these claims are not sufficient to establish the unreasonableness of the decision rendered by the Board. Following the Supreme Court decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 at paragraph 100, it is up to the party challenging a decision to show that it is unreasonable and therefore to satisfy the reviewing court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency." However, I am of the opinion that the applicant did not demonstrate that this was the case. The Board relied on the correct legal criteria, carefully considered the arguments raised by the applicant, and clearly explained why the delay after April 5, 2018, was not justified. This decision clearly fell within the range of possible, acceptable outcomes in respect of the facts and law.

[9] As for the applicant's argument based on the failure to observe the rules of procedural fairness, it cannot be accepted. The applicant was aware of the employer's position, and he had had the opportunity to present all of his arguments to the Board. He also cannot complain that he was denied a hearing before the Board, as the Board is expressly authorized to decide any matter before it without holding an oral hearing (see section 22 of the *Federal Public Sector Labour Relations and Employment Board Act*, S.C. 2013, c. 40, s. 365). Lastly, there is no reason to

believe that the Board failed to consider all of the relevant evidence set before it; the additional evidence that the applicant would have wanted to submit had been filed as part of his complaint against the union and did not involve the employer.

[10] For all these reasons, I would dismiss the application for judicial review. Costs to the respondent are set at $750.

"Yves de Montigny"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-301-20
STYLE OF CAUSE:	DIMITRI GREKOU v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTREAL, QUEBEC
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REASONS FOR JUDGMENT BY:	DE MONTIGNY J.A.
CONCURRED IN BY:	PELLETIER J.A. LEBLANC J.A.
DATED:	NOVEMBER 17, 2021

APPEARANCES:

Dimitri Grekou	FOR THE APPLICANT (Representing himself)
Andréanne Laurin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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