

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230330

Docket: A-176-22

Citation: 2023 FCA 73

**CORAM: BOIVIN J.A.
ROUSSEL J.A.
GOYETTE J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

PATRICK LAWLOR

Respondent

Heard at Halifax, Nova Scotia, on March 22, 2023.

Judgment delivered at Ottawa, Ontario, on March 30, 2023.

REASONS FOR JUDGMENT BY:

BOIVIN J.A.

CONCURRED IN BY:

**ROUSSEL J.A.
GOYETTE J.A.**

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REASONS FOR JUDGMENT

BOIVIN J.A.

[1] The appellant, the Attorney General of Canada, appeals from the judgment of Heneghan J. of the Federal Court (the Judge), rendered June 3, 2022 (2022 FC 821). In her decision, the Judge allowed the application for judicial review filed by Mr. Lawlor, the respondent, with respect to a job classification decision.

[2] The respondent is a civilian employee of the Royal Canadian Navy, who has served since February 15, 2010 as a Risk Analyst. This position was classified at the AS-04 level. In 2011, new responsibilities were added to the respondent's position, including information risk management. In 2018, the respondent's manager requested that the respondent's position be retrospectively reclassified to the level of AS-05, going back to 2011, in order to take into account the added responsibilities.

[3] This request to reclassify the respondent's position was considered and evaluated twice. Each time, it was rejected in favour of maintaining classification at the AS-04 level.

[4] The respondent then filed a grievance with the Classification Grievance Committee (the Committee). The Committee's role is to evaluate the job classification *de novo*, according to the Directive on Classification Grievances and the relevant Classification Standard, based on the material before it, such as comparative job descriptions, organizational context, the grievor's oral and/or written submissions and documents, and information gathered from management (Appeal Book, Vol. 3 at 596-98). Following the respondent's grievance hearing, the Committee's Report recommended that the position remain classified at the AS-04 level. The final decision on classification was made by a senior official, in this case, the Director General, Workplace Management, Department of National Defence who adopted the Committee's Report recommendation and communicated this outcome to the respondent by a letter dated January 19, 2021 (Appeal Book, Vol. 3 at 546-60).

[5] Unsatisfied with this result, the respondent began judicial review proceedings in the Federal Court of the Director General's decision, pursuant to subsection 209(1) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2. Before the Judge, the respondent raised several grounds of review, alleging that the decision was both procedurally unfair and unreasonable.

[6] The Judge rejected the respondent's arguments with respect to procedural fairness, but found that the Committee's comparison of the respondent's overall job summary to the overall summary of benchmark positions contained in the Classification Standard Administrative Services was unreasonable. Specifically, the Judge was of the view that the Committee's analysis should have been limited to comparing the "Knowledge" and "Decision Making" factors to the corresponding sections in the benchmark positions, without reference to the summaries of the respondent's position or the benchmark positions. The Judge opined that the Committee's comparison of the overall summaries was unreasonable as it added an "extra 'consideration'" (Judge's decision at para. 71). The Judge thus allowed the application for judicial review.

[7] It must be noted that the respondent raised the issue of procedural fairness in his Memorandum of Fact and Law (at paras. 56-87). However, as there was no cross-appeal filed by the respondent concerning the finding of the Judge on procedural fairness, the only issue under appeal before our Court is accordingly the Judge's finding with respect to reasonableness.

[8] When seized of an appeal from an application for judicial review disposed of by the Federal Court, this Court must step into the shoes of the Federal Court and concentrate on the

administrative decision in question (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 (*Agraira*) at para. 46). In the present case, our Court must therefore focus on the Committee's Report, which supports the Director General's decision and determine whether, in reviewing it, the Judge identified the appropriate standard of review and applied it correctly (*Agraira* at para. 47).

[9] I am satisfied that the Judge chose the correct standard of review, that is, the standard of review of reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653). However, I am of the view that the Judge erred in finding that the Committee's decision was unreasonable. I would therefore allow the appeal.

[10] In this appeal, the respondent essentially urges our Court to find that a consideration of the factor descriptions of the benchmark positions in isolation is sufficient. I cannot agree. The requirements set out in the Directive on Classification Grievances, the Classification Standard Administrative Services, as well as the Notes to Raters, demonstrate otherwise.

[11] First, from a general perspective, the Directive on Classification Grievances seems to indicate that the overall organizational context is a relevant consideration for the work of the Committee:

4.4.2 Establishing the appropriate classification (that is, the occupational group, subgroup (if applicable), level and ratings) of the grieved position based on:

...

4.4.2.2 The organizational context;

[Appeal Book, Vol. 3 at 590]

A.2.19 With regard to the requirements in subsection 4.4.2 of the directive, the Classification Grievance Committee will establish the appropriate classification by:

...

A.2.19.3 Evaluating the work assigned to the position and described in the job description, taking into consideration the organizational context, against the appropriate job evaluation standard;

[Appeal Book, Vol. 3 at 596]

[12] Second, and more specifically, the Classification Standard Administrative Services describes 6 steps for its application and clearly directs that the position being rated is to be compared “as a whole”—as opposed to the factors in isolation—to comparator positions, particularly in steps 2 and 6:

1. Allocation of the position to the category and the group is confirmed by reference to the definitions and the descriptions of inclusions and exclusions.
2. The position description is studied to ensure understanding of the position as a whole and of each factor. The relation of the position being rated to positions above and below it in the organization is also studied.
3. Tentative degrees of each factor in the job being rated are determined by comparison with degree definitions in the rating scales. Uniform application of degree definitions requires frequent reference to the descriptions of factors and the notes to raters.
4. The description of the factor in each of the [benchmark] positions exemplifying the degree tentatively established is compared with the description of the factor in the position being rated. Comparisons are also made with descriptions of the factor in [benchmark] positions for the degrees above and below the one tentatively established.
5. The point values for all factors are added to determine the tentative total point rating.
6. The position being rated is compared as a whole to positions to which similar total point values have been assigned, as a check on the validity of the total rating.

[emphasis added; Appeal Book, Vol. 3 at 606-607]

[13] Despite the clear language in the 6-step classification process that “the position being rated is compared as whole”, the Judge appears to have limited her analysis to the fourth step and found that an overall “comparison is not addressed in the 6-step classification process” (Judge’s decision at paras. 64-65, 71).

[14] Third, the Notes to Raters, contained in the Classification Standard Administrative Services, indicate that a holistic, comparative analysis is needed when evaluating the different factors. For example, under the “Decision Making” factor, the Notes to Raters similarly refer to “the whole context” and direct that “[t]he job as a whole is then to be compared to the descriptions of the [benchmark] positions” (Appeal Book, Vol. 3 at 616).

[15] Again, despite the clear language of the Notes to Raters, the Judge found that, “the ‘Notes to Raters’ do not direct a comparison of an individual factor to the [b]enchmark summary” (Judge’s decision at para. 71).

[16] In support of his contention, the respondent also relies on *Wilkinson v. Canada (Attorney General)*, 2020 FCA 223, 455 D.L.R. (4th) 693 (*Wilkinson*). However, the circumstances of that case must be distinguished from those of the present case. In *Wilkinson*, the ultimate decision maker, the Deputy Head, rejected the Classification Grievance Committee’s recommendation. Our Court found that the Deputy Head’s reasons were not sufficient and therefore found that the decision was unreasonable (*Wilkinson* at paras. 50-56). In contrast to *Wilkinson*, here, the Director General adopted the Committee’s Report and recommendation, which fulfilled the

requirements of the Directive on Classification Grievances and the Classification Standard Administrative Services.

[17] Consequently and, despite the able submissions of the respondent, I find that the Committee's Report, supporting the Director General's decision, is transparent, intelligible, and justified in relation to the factual and legal constraints in the circumstances. A fair reading of the Committee's Report reveals a systematic, detailed evaluation of each factor as well as a comparison of the respondent's position to relevant benchmark positions as a whole. In this context, it was an error for the Judge to substitute her own views and to find that "the Committee unreasonably compared the Applicant's overall job summary to the overall summary of the [b]enchmark position" and that, "the Committee's adoption of this extra 'consideration' is unreasonable" (Judge's decision at para. 71).

[18] For these reasons, I would accordingly allow the appeal, set aside the judgment of the Federal Court dated June 3, 2022, in file T-273-21 (2022 FC 821), dismiss the application for judicial review and restore the decision of the Director General, Workplace Management, Department of National Defence, dated January 19, 2021, approving the Classification Grievance Committee's recommendation. At the hearing, the appellant did not request costs and I would therefore award no costs.

"Richard Boivin"

J.A.

"I agree

Sylvie E. Roussel J.A."

"I agree

Nathalie Goyette J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: ROUSSEL J.A.
GOYETTE J.A.

DATED: MARCH 30, 2023

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