

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140214

Docket: A-438-12

Citation: 2014 FCA 43

**CORAM: NOËL J.A.
MAINVILLE J.A.
WEBB J.A.**

BETWEEN:

CHRIS HUGHES

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on February 12, 2014.

Judgment delivered at Vancouver, British Columbia, on February 14, 2014.

REASONS FOR JUDGMENT BY:

MAINVILLE J.A.

CONCURRED IN BY:

**NOËL J.A.
WEBB J.A.**

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REASONS FOR JUDGMENT

MAINVILLE J.A.

[1] This concerns an application for judicial review challenging a decision of the Public Service Labour Relations Board (Board) dated January 5, 2012 and bearing neutral citation number 2012 PSLRB 2 (Decision). In its Decision, the Board dismissed the applicant's complaints alleging that the Department of Human Resources and Skills Development (HRSD) had violated paragraph 190(1)(g) of the *Public Services Labour Relations Act*, S.C. 2003, c. 22, s. 2 in that it committed an unfair labour practice within the meaning of section 185 of that Act.

[2] In his complaints, the applicant alleged that HRSD had failed to transfer or deploy him to another work site as he had requested and that it also failed to continue to offer him employment after his term appointment expired on June 27, 2008, because he expressed aspirations to become a member of his union's executive or because it wished to retaliate against him for filing another earlier unfair labour practice complaint.

[3] The Board held hearings in Victoria, British Columbia, on October 13 and 14, 2010, from May 2 to 5, 2011, and on August 17, 2011. The Board received into evidence numerous documents and heard many witnesses called by both the applicant and HRSD. In its Decision comprising 475 paragraphs and running for 58 pages in its printed version, the Board carried out a detailed review of the evidence and of the applicant's submissions.

[4] Based on its analysis, the Board found that HRSD's decisions not to transfer or to redeploy the applicant were not motivated by any anti-union animus. It further found that HRSD had submitted credible and persuasive evidence regarding the reasons for not extending the applicant's term appointment a third time, and that the applicant had failed to establish that this decision was made in retaliation for his expressed desire to become a union executive member or because he had filed a prior unfair labour practices complaint.

[5] The applicant raises a multitude of issues in his application seeking to overturn the Decision. Some of these issues are set out as challenges to the analysis of the evidence carried out by the Board or to the weight it gave to some evidence. The applicant also asserts that a witness perjured

herself, but on close analysis, this assertion rather concerns a challenge to the credibility of the concerned witness and to the weight the Board gave to that testimony. Other issues raised by the applicant concern alleged violations to procedural fairness by the Board, notably for refusing to reopen the hearing to consider new evidence and failing to accommodate the applicant during the hearing by sitting long hours on certain hearing days.

[6] I will first address the allegations relating to procedural fairness and then consider the allegations with respect to the Board's failure to properly assess the evidence.

[7] At paragraphs 320 to 328 of its Decision, the Board dealt with the applicant's numerous requests to adduce new evidence after the evidence stage of the hearing had been completed. It found that some of the evidence sought to be adduced was not new or directly relevant to the complaints, and that the issues which the applicant wished to address had already been discussed at the hearing.

[8] The applicant has failed to show to this Court that the Board erred in reaching these conclusions or that it breached the principles of procedural fairness in so doing. On the contrary, the record before us shows that the applicant was afforded ample opportunity to present evidence and to put forward arguments to the Board.

[9] The applicant also submits that the Board breached procedural fairness when it refused to reopen the hearing after the Decision had been issued so as to consider additional email communications which the applicant alleges had been recently disclosed to him by his former

employer. Based on the record before this Court, the applicant has failed to show that this evidence was pertinent to the issues before the Board or that it could have possibly resulted in a different decision being issued by the Board.

[10] The applicant adds that the Board refused to take into account his history of stress, anxiety and depression during the proceedings when it extended the hours during which some of the hearings were conducted. However, the record does not disclose that the applicant sought an accommodation from the Board on the concerned hearing days. In these circumstances, I fail to see how the Board could have breached the principles of procedural fairness.

[11] With respect to the thrust of the applicant's submissions, which essentially challenge the assessment of the evidence by the Board and the conclusions reached in its Decision derived from that evidence, the role of this Court in judicial review is not to reassess the evidence or to substitute our own opinion for that of the Board.

[12] Rather, with respect to the findings of fact made by the Board, our role is limited to determining whether the Board's assessment of the evidence and its conclusions derived from that evidence were reasonable. In this context, the Supreme Court of Canada has explained "reasonableness" as follows in *Dunsmuir v. New-Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that

make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[13] Though the applicant is clearly unsatisfied with the conclusions reached by the Board, he has failed to demonstrate that these conclusions were unreasonable in light of the record considered as a whole. The Board's Decision is clearly intelligible and it is well articulated. Moreover, based on the record placed before us, the Board's conclusions in its Decision all fall within a range of possible acceptable outcomes which are defensible in respect of the facts and law.

[14] The applicant placed some reliance on a decision of the Canadian Human Rights Tribunal (*Hughes v. Canada (Human Resources and Skills Development)*, 2012 CHRT 22) which concluded that HRSD had not accommodated his disability by not renewing his term contract. This decision is currently the object of judicial review proceedings in the Federal Court, and I will consequently express no opinion on its merits. However, I note that in that decision, the Canadian Human Rights Tribunal also found that HRSD did not subject the applicant to retaliation or threats of retaliation for filing his human rights complaint. In light of this conclusion, I fail to see how this decision can be of assistance to the applicant for the purpose of challenging the Decision of the Board with respect to its dismissal of his unfair labour practices complaints.

[15] I would consequently dismiss the application. Taking into account the applicant's circumstances, this is not a case for costs.

"Robert M. Mainville"

J.A.

"I agree
Marc Noël J.A."

"I agree
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-438-12

STYLE OF CAUSE: CHRIS HUGHES v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: FEBRUARY 12, 2014

REASONS FOR JUDGMENT BY:

MAINVILLE J.A.

CONCURRED IN BY:

NOEL J.A.
WEBB J.A.

DATED: FEBRUARY 14, 2014

APPEARANCES:

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ON HIS OWN BEHALF

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