Federal Court  Cour fédérale

Date: 20141212

Docket: T-380-14

Citation: 2014 FC 1206

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 12, 2014

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

MOHAMED BALIKWISHA PATANGULI

Applicant

and

DEPUTY HEAD
(DEPARTMENT OF CITIZENSHIP
AND IMMIGRATION)

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, for judicial review of a decision dated January 20, 2014, made under the *Public Service*

Labour Relations Act, SC 2003, c 22, s 2 (Act) by Adjudicator Linda Gobeil (adjudicator) dismissing the grievance of the applicant.

II. Facts

[2] The applicant was a pre-removal risk assessment officer classified at the PM-04 level with the Department of Citizenship and Immigration in Calgary until his dismissal in April 2010. Knowledge of the English language is essential for this position. The applicant is more proficient in French than in English, even though he is bilingual.

[3] The applicant's performance was excellent and he always had a cordial relationship with his colleagues.

[4] The applicant and some of his colleagues registered for a selection process to be promoted to a position at the PM-05 level. As part of that process, the participants took an open-book written exam, the questions of which were to remain confidential. Following the exam, the participants were given the answers to the questions. Those answers were not to be disclosed by the participants.

[5] While the applicant's colleagues Ms. Lewis and Ms. Lasonde wrote the exam on July 8, 2009, as scheduled, an injury to the applicant's right wrist or hand forced him to postpone the writing of his exam until August 13, 2009.

[6] On July 8, 2009, after the applicant's colleagues finished their exam, the applicant emailed Ms. Lewis to congratulate her. However, the applicant also stated the following in his email: "I also wanted to verify your questions, could you forward them to me?" That suggests that the applicant wanted to obtain the questions in advance, but the applicant maintains that that request was meant as a joke.

[7] On August 7, 2009, at 12:09 p.m., the applicant received an email containing the questions and answers from the PM-05 level exam. That email originated from Ms. Lasonde's computer. Thirty minutes after receiving that email, the applicant forwarded it to his personal email account.

[8] The identity of the person who sent that email from Ms. Lasonde's computer is at the heart of this application for judicial review.

[9] The applicant argues that he did not use Ms. Lasonde's computer to send the exam questions and answers to his email account. He states that he took his lunch break at the time the email was sent like he usually did, and therefore maintains that he could not have sent that email at 12:09 p.m. The applicant contends that he forwarded that email to his personal email account not knowing that it contained the answers for the PM-05 exam. The applicant alleges that he had a brief conversation with Ms. Lasonde on August 7, 2009, but that he did not have the chance to mention the email because he had to leave for a physiotherapy appointment.

[10] Ms. Lasonde categorically denies sending that email to the applicant because she spent her lunch break with a friend, Ms. Grixti, at the time it was sent. Ms. Lasonde alleges that she and Ms. Grixti had gone to City Hall to pay a parking ticket during that lunch break. Ms. Grixti corroborated Ms. Lasonde's testimony.

[11] Ms. Lasonde submits that she discovered the email that sent the exam questions and answers to the applicant while she was doing a routine cleaning of her email account. Shocked by the discovery, she alerted her supervisor, Mr. Fergusson, to it. Ms. Lasonde then tried to avoid the applicant.

[12] The applicant maintains that he tried to discuss the email dated August 11, 2009, with Ms. Lasonde, but that he did not because his colleague said that she was busy. The applicant also argues that he did not try to discuss the email with his supervisor in order to maintain good working relationships with his colleagues and so as to not cause problems for Ms. Lasonde.

[13] On August 12, 2009, the evening before the exam, the applicant reviewed the email to prepare his own answers to the exam questions.

[14] On August 13, 2009, while writing the exam, the applicant realized that the exam questions were the same as those he had received, and he used his prepared answers in the test.

[15] On August 13, 2009, shortly after finishing his exam, the applicant was called into the office of Mr. Fergusson, his supervisor. Mr. Fergusson showed the applicant two emails. The

first one was the email sent from Ms. Lasonde's email account to the applicant's email account containing the exam questions and answers. The second one was the email forwarding the first email from the applicant's work email account to the applicant's personal email account. When confronted by his supervisor, the applicant first refused to admit his error and stated that he had no knowledge of those emails. However, that evening, the applicant emailed his supervisor to say that he deeply regretted writing the exam having known the questions in advance.

[16] On August 27, 2009, Mr. Fergusson informed the applicant that an internal administrative investigation had been launched to shed light on the events surrounding his use of the exam questions and answers.

[17] On August 31, 2009, the applicant was interviewed in respect of those events to allow him the opportunity to provide additional information to the investigation. During that interview, the applicant expressed concern about the fairness of the investigation process and stated that he was found guilty even before all of the facts were known. Furthermore, on two occasions, once before the interview and once during the interview, the applicant asked to be questioned in French. That request was refused because his position was designated English essential. However, the investigation committee informed the applicant that it would focus on making sure that the questions asked were clear and encouraged him to ask for clarification if he did not understand a question. The applicant was interviewed twice during that investigation.

[18] The applicant was informed of his dismissal in a letter dated April 19, 2010. On May 11, 2010, according to section 208 of the Act, the applicant presented an individual

grievance before an adjudicator. Through the grievance, the applicant contested his dismissal, asked to be reinstated, requested that any mention of discipline be stricken from his personnel file and requested that he be reimbursed for the pay and benefits he was deprived of by the dismissal.

III. Decision of the adjudicator

[19] In her reasons, the adjudicator specified that she had "no hesitation" denying the applicant's grievance; the evidence against him was overwhelming. The adjudicator pointed out that the allegations made and proven, on a balance of probabilities, were serious and that they damaged the relationship of trust between the employee and the employer.

[20] The adjudicator found, on a balance of probabilities, that the applicant took advantage of Ms. Lasonde's absence to enter her office and send the questions and answers to his email address. The adjudicator also inferred from the evidence submitted that the applicant knew Ms. Lasonde's routine and knew that it took about 10 minutes for her computer to automatically lock. The adjudicator based her finding on the fact that the evidence shows that the applicant entered the work area, where his and Ms. Lasonde's offices are, at 11:58 a.m. on August 7, 2009, and that he was therefore present when the email was sent from Ms. Lasonde's computer. The adjudicator also noted the undisputed fact that the applicant sent the exam questions and answers to his personal email account.

[21] While evaluating Ms. Lasonde's testimony during the hearing, the adjudicator stated that Ms. Lasonde impressed as being credible and a principled individual. The adjudicator noted that

her testimony was unequivocal and that she hurried into her supervisor's office when she discovered the email to the applicant. The adjudicator noted that Ms. Lasonde had no reason or motivation to share the questions and answers from the email with the public servant.

[22] Furthermore, the adjudicator pointed out that the applicant first told his supervisor, Mr. Fergusson, that he had never seen the email dated August 7, 2009, sent from Ms. Lasonde's computer or the email he sent from his computer. Even though the applicant finally admitted to his wrongdoing, the adjudicator contended that the applicant's first denial shows that he intended to admit to his wrongdoing only when no other avenue was open to him. The adjudicator also found that the applicant would never have admitted his wrongdoing had Mr. Fergusson not confronted him.

[23] After reviewing the facts, the adjudicator found without hesitation that the applicant sent the first email from Ms. Lasonde's computer and that he has not fully realized the seriousness of his acts. Moreover, the adjudicator stated that she is perplexed as to the public servant's attitude and the sincerity of his remorse. The adjudicator also found that "given the nature of the duties of pre-removal risk assessment officers and the impacts of their decisions on claimants' lives, the employer must be able to fully trust its employees".

[24] Before concluding, the adjudicator dismissed the argument that Mr. Fergusson should have prevented the applicant from writing the exam because the evidence shows that Mr. Fergusson was not aware that the public servant wrote the exam on August 13, 2009.

[25] Finally, the adjudicator argued that the interview and investigation should have been conducted in French. The adjudicator stated that she hopes that the employer will reconsider doing so in the future. However, the adjudicator maintained that the adjudication process remedied the procedural error because it was a proceeding *de novo* and that the applicant was able to express himself in French.

IV. Issues

[26] Four issues arise:

1. Was the adjudicator's decision reasonable? More specifically:
    a. Did the adjudicator provide sufficient reasons and adequately consider the evidence in support of her decision?
    b. Did the adjudicator reasonably conclude that dismissal was an appropriate penalty?
2. Did the adjudicator err by finding that the adjudication process remedied the violation of the applicant's language rights?
3. Did the adjudicator exhibit bias?
4. Did the adjudicator provide a fair hearing?

V. Submissions of the parties

[27] The applicant is not represented by counsel. His arguments are summarized below to reflect, as faithfully as possible, the 52 pages of written arguments submitted and his oral

submissions (in addition to the 23 pages of additional written submissions in support of his oral submissions). Essentially, the applicant opposes all of the adjudicator's findings. In my opinion, it is unnecessary to address all of the applicant's arguments in this decision to ensure that justice is done. Even though I have considered all of the applicant's arguments, my analysis focuses on the arguments that, in my view, merit being discussed in light of the facts in this case. For example, the applicant raised the argument of the violation of the principle of the presumption of innocence. That presumption applies to criminal law, so this decision will not address that argument.

A. *Applicant's submissions*

[28] The applicant argues that questions of mixed fact and law must be analyzed on a reasonableness standard. He maintains that issues with respect to an adjudicator's lack of impartiality, errors in law, issues with respect to an adjudicator's jurisdiction, as well as a breach of the principles of natural justice are issues that must be reviewed on a correctness standard.

[29] The applicant contends that the number of errors and omissions by the adjudicator vitiate her decision so as to make it unreasonable. The applicant argues, in particular, that the adjudicator selectively used the evidence and testimony in a way that breaches the principles of natural justice. He also argues that the adjudicator: (i) refused to deal with the applicable case law; (ii) refused to rule on the bias of the investigation committee; (iii) provided inadequate reasons for her findings; (iv) gave rise to a reasonable apprehension of bias; and (v) erred by finding that the dismissal was justified.

[30] The applicant alleges that there is no [TRANSLATION] "high quality" strong and convincing proof that he entered Ms. Lasonde's office. The applicant also contends that the analysis on a balance of probabilities is not appropriate in this case because his dismissal was a serious penalty.

[31] The applicant argues that the adjudicator's bias and conduct compelled him to testify against himself. That statement by the applicant is based namely on the fact that the adjudicator apparently [TRANSLATION] "compelled the applicant to testify against himself" by questioning him on his potential presence in Ms. Lasonde's office on August 7, 2009, at 12:09 p.m.

[32] The applicant also contends that the adjudicator did not adequately justify the fact that she found his testimony not credible.

[33] The applicant maintains that the adjudicator submitted inadequate reasons in support of her findings; the reasons were not clear, precise, transparent and intelligible (*Sidhu v Canada (Citizenship and Immigration)*, 2014 FC 176 at para 20).

[34] Furthermore, the applicant argues that the adjudicator breached her duty of neutrality and independence by stating, in particular, the following at paragraph 88 of her decision: "I would add that given the nature of the duties of pre-removal risk assessment officers and the impacts of their decisions on claimants' lives, the employer must be able to fully trust its employees". The applicant contends that his apprehension of bias is namely caused by the fact that the adjudicator asked him to shorten his testimony to be able to go to her mother-in-law's funeral.

[35] The applicant argues that the deference owed to the adjudicator does not justify a breach of the principles of procedural fairness (*Mooney v Canadian Society for Immigration Consultants*, 2011 FC 496 at para 122).

[36] Furthermore, the applicant maintains that the adjudicator erred by objecting to continuing the arguments in Ottawa to ensure that he could provide all of his testimony.

[37] Finally, the applicant argues that the employer was obligated to question him in French because it is his preferred language. The applicant also argues that the adjudicator erred by failing to adequately address his right to be heard and to express himself in the language of his choice.

B. *Respondent's submissions*

[38] The respondent maintains that the applicable standard of review in this case is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 68 (*Dunsmuir*); *Canada (Attorney General) v Pepper*, 2010 FC 226 at para 35). The respondent argues that the reasonableness standard applies to an adjudicator's decision on the merits of a dismissal for misconduct (*Morissette v Canada (Attorney General)*, 2002 FCA 314 (*Morissette*)).

[39] The respondent admits that a breach of the principles of procedural fairness and natural justice must be reviewed on a correctness standard. However, he argues that since in this case the adjudicator provided reasons for her decision, the result behind the decision must be challenged within the reasonableness analysis (*Newfoundland and Labrador Nurses' Union v Newfoundland*

and Labrador (Treasury Board), 2011 SCC 62 at para 22 (*Newfoundland Nurses*)), that is, primarily its intelligibility and the transparency of the decision-making process (*Newfoundland Nurses*, at para 11).

[40] The respondent argues that contrary to the principles in *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 (*Communications Union of Canada*) at para 54, the applicant conducted a clause-by-clause analysis of the adjudicator's findings instead of considering the decision as a whole.

[41] The respondent maintains that the applicant's claims that the fact that the investigation and examination were not conducted in French is sufficient to conclude that the adjudicator's decision is unreasonable cannot be accepted because the application for judicial review concerns the adjudicator's decision and not the investigation conducted by the applicant's employer. He specifies that adjudication is a process *de novo* that makes it possible to rectify injustices caused by decisions of employers (*Pagé v Canada (Attorney General)*, 2009 FC 1299 (*Pagé*) at para 21; *Tipple v Canada (Treasury Board)*, [1985] FCJ No 818 (FCA) (QL) and the adjudicator based her decision on the facts presented at the hearing.

[42] Regarding the allegations of bias made by the applicant, the respondent argues that they cannot be accepted because a reasonable, right-minded and "informed person, viewing the matter realistically and practically—and having thought the matter through", could not conclude that the adjudicator exhibited bias against the applicant (*Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369, at page 394). The respondent points out that even though it is

possible and understandable that the applicant is disappointed that the adjudicator did not find him to be credible on certain aspects, the adjudicator drew her conclusions from the applicant's answers and not because of a tendency, inclination or predisposition to favour one of the two parties.

[43] The respondent also argues that it is possible that the applicant perceived the fact that the adjudicator asked him questions as bias because he is not familiar with the adjudication process, but points out that counsel for the applicant did not object to that aspect of the proceeding during the adjudication process.

[44] Finally, the respondent maintains that the adjudicator's decision was not unreasonable on its face because there is authority for the proposition that cheating on an exam to be considered for promotion is serious enough to break the confidence between an employer and an employee (*R v S (RD)*, [1997] 3 SCR 484 at paras 106-108 (*R v S (RD)*); *Thomas v House of Commons*, [1991] PSSRB No 75).

VI. Analysis

[45] The applicant provided a number of arguments in support of his application for judicial review. Each of those arguments was considered. This analysis focuses on, however, the applicant's arguments that, in my opinion, are the most important.

A. *Preliminary issue*

[46] At the beginning of the hearing and after hearing the representations of the parties on the issues, I rejected the applicant's request to admit in evidence certain documents that were included in the record but not submitted in evidence before the adjudicator.

[47] I am of the opinion that those documents are not of much use to me in rendering a decision in this case. Furthermore, the applicant has not convinced me that those documents were not available during the adjudication process or that the applicant could not have known that they were relevant. According to *Rosenstein v Atlantic Engraving Ltd*, 2002 FCA 503 at paras 8-9 and *Tint King of California Inc. v Canada (Registrar of Trade-Marks)*, 2006 FC 1440 at paras 18-19, I will not exercise my discretion to admit those documents.

B. *Standard of review*

[48] In *Dunsmuir*, at paras 57 and 63, the Supreme Court of Canada stated that a standard of review analysis is not necessary when "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded to a decision maker with regard to a particular category of question".

[49] In *Newfoundland Nurses*, at paras 14 and 22, the Supreme Court of Canada established that any challenge to the reasoning of the decision should therefore be made within the reasonableness analysis.

[50] Furthermore, great deference must be shown in evaluating the reasonableness of an adjudicator's decision (*Smith v Canada (Attorney General)*, 2009 FC 162 at paras 13-14).

[51] An analysis on the reasonableness standard must be undertaken to determine whether the adjudicator erred by finding that the dismissal was an adequate penalty (*Deschênes v Imperial Bank of Commerce*, 2011 FCA 216 at paras 40, 45 (*Deschênes*), *Morissette* at para 2).

[52] An analysis on the correctness standard must be undertaken to determine whether the applicant's right to a fair hearing was compromised (*McBride v Canada (National Defence)*, 2012 FCA 181 at para 32 (*McBride*); *Chapagain v Canada (Citizenship and Immigration)*, 2010 FC 887 at para 14). The same standard will apply in determining whether the adjudicator exhibited bias (*Zhu v Canada (Citizenship and Immigration)*, 2013 FC 1139 at para 38).

C. *Was the adjudicator's decision reasonable?*

(1) The adequacy of the reasons and consideration of the evidence

[53] The applicant essentially opposes almost all of the reasons underlying the adjudicator's findings. The applicant argues, in particular, (i) that the number of errors and omissions by the adjudicator vitiates her decision; (ii) that the adjudicator selectively used the evidence; and (iii) that the reasons underlying the adjudicator's decision are incomplete, namely because they do not address the bias of the investigation committee and do not completely convey why Ms. Lasonde was deemed more credible than the applicant.

[54] The Supreme Court of Canada clarified the principles concerning the adequacy of the reasons behind a decision in *Newfoundland Nurses* at paragraph 16:

> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, 1973 CanLII 191 (SCC), [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the Dunsmuir criteria are met.
>
> [Emphasis added.]

[55] Reasons for a decision allow litigants to ascertain that the key elements of the evidence submitted are considered and that their claims have been taken into account (*Via Rail Canada Inc. v National Transportation Agency*, [2001] 2 FC 25 (CA) at paras 17-18). That said, as pointed out by the respondent, it has been established that an arbitral award must be approached as "an organic whole, not as a line-by-line treasure hunt for error" (*Communications Union of Canada* at para 54). Moreover, to the extent that the evidence submitted supports the findings of fact made by the adjudicator, the case law recognizes that reasons for a decision need not be perfect. They may include minor errors and fail to refer to every piece of the evidence without being deemed unreasonable (*Colistro v BMO Bank of Montreal*, 2008 FCA 154 at para 8; *6245820 Canada Inc. v Perrella*, 2011 FC 728 at para 55).

[56] I note that the applicant maintains that the adjudicator erred by finding that Ms. Lasonde was credible without assessing the credibility of the applicant. The adjudicator stated in her

reasons that she found that Ms. Lasonde impressed as being a credible witness during the hearing and that she had no reason or motivation to share her exam questions. I cannot agree with the applicant's arguments. First, the adjudicator was in a privileged position to draw conclusions with respect to the credibility of the witnesses. Second, the adjudicator's reasons allow the litigant to understand why Ms. Lasonde's testimony was preferred over his. The adjudicator provided adequate reasons for her decision on this point. While Ms. Lasonde had no reason to send the email to the applicant, he was evasive when confronted by his employer. Furthermore, it is clear that the applicant could have benefitted from obtaining the questions and answers if the cheating had not been discovered.

[57] The applicant also maintains that the reasons for decision show that the adjudicator selectively used the evidence and that the number of errors and omissions by the adjudicator vitiates her decision. For example, the applicant makes the following arguments:

1. The adjudicator stated that, on August 10, 2009, Ms. Lasonde did not speak to the applicant, but to the contrary, Ms. Lasonde had said the following two words to him: [TRANSLATION] "WHAT" and [TRANSLATION] "YES" to let him know that she was busy;

2. The adjudicator should have considered the fact that Mr. Fergusson received the emails used by the applicant on August 12, 2009. The adjudicator erred by finding that the employer was not aware of the date and time of the applicant's exam. According to the applicant, the fact that Mr. Fergusson received and printed the emails before the exam without preventing the applicant from completing it demonstrates that the employer was acting in bad faith;

3. The adjudicator erred by finding that the applicant entered Ms. Lasonde's office to send the exam questions and answers to his work email address and then forwarded them to his personal email address;

4. The adjudicator found at paragraph 82 that the applicant entered Ms. Lasonde's office and sent an email to his personal email address, while the email was initially sent to his work email address.

[58] These errors and omissions are minor and do not undermine the reasonableness of the reasons for the adjudicator's decision.

[59] The applicant seems to forget that the key factual element of this whole story is that he cheated to be considered for a higher level position within the public service, thus demonstrating a severe lack of integrity and honesty. When questioned on this issue, he first refused to admit his wrongdoing before admitting part of the truth to his employer.

[60] In my opinion, the adjudicator's decision is consistent and intelligible. The applicant's arguments demonstrate that he conducted a microscopic analysis of each of the adjudicator's sentences, identifying every imperfection in a decision that should be considered as a whole. The applicant merely individually reinterpreted each fact by implying that once intertwined, they would make it possible to conclude that the adjudicator's decision was unreasonable, but he did not identify a more convincing factual theory than that which supported the adjudicator's findings. I am of the view that the adjudicator's reasons adequately show the essential elements

justifying her decision. Furthermore, the adjudicator did not, as the applicant seems to claim, have to copy every scintilla of evidence.

(2) Dismissal as an appropriate penalty for the applicant's misconduct

[61] For the following reasons, I am of the opinion that the applicant failed to demonstrate that the adjudicator's decision regarding his dismissal was unreasonable.

[62] In my view, the adjudicator was right to make the following finding at para 82 of her decision:

> . . . on a balance of probabilities, finding that on August 7, 2009, [the applicant] took advantage of Ms. Lasonde's anticipated absence, entered her office, and sent the questions and answers from her PM-05 selection process exam to his personal home email address.

[63] I agree with the adjudicator's comments, despite no direct evidence that the applicant entered Ms. Lasonde's office and the fact that he denied entering Ms. Lasonde's office. The adjudicator's findings in that respect are completely reasonable.

[64] Furthermore, regardless of whether the applicant entered Ms. Lasonde's office, there is no doubt that he cheated by using the questions and answers from a previous exam. Also, he first refused to admit his misconduct when confronted by his supervisor. I also do not believe that it was unreasonable to find that the applicant tried to mislead his colleague Ms. Lewis when he asked her the following: "I also wanted to verify your questions, could you forward them to me?"

[65] As pointed out by the respondent, similar decisions were rendered by the Public Service Labour Relations Board according to which cheating on an exam to be considered for promotion can result in termination (*Rivard v Treasury Board (Solicitor General of Canada – Correctional Service)*, 2002 PSSRB 75; *Thomas v House of Commons*, [1991] PSSRB No 75). The applicant argues that the adjudicator should have followed *Hampton v Treasury Board*, PSSRB, File No 166-2-28445 (1998) (*Hampton*), a decision where, in circumstances similar to this case, it was held that dismissal was too severe a penalty. In *Hampton*, the public servant in question was under considerable personal stress at the time of his misconduct because of his wife's pregnancy and the loss of a significant portion of his savings. The respondent has failed to demonstrate a similar personal situation. His quality of life declined following his dismissal and not at the time of his misconduct. Moreover, the applicable standard in this case is reasonableness and the dismissal does not seem to be excessive based on the above-mentioned precedent.

[66] Furthermore, an employer's termination letter is a relevant element to take into account when assessing the loss of confidence between an employer and an employee (*Deschênes* at para 54). At paragraph 88 of her decision, the adjudicator stated the following: [TRANSLATION] "I agree with Ms. Deschênes' comments that [the applicant's] actions were serious and that they broke the relationship of trust between the employer and its employee". In her letter, Ms. Deschênes stated the following:

> In rendering my decision, I have taken into consideration various mitigating circumstances including your years of service, your previous disciplinary record, and your previous performance appraisal.
>
> That said, I consider your misconduct to be very serious. You have failed to take full responsibility for your actions.

> . . .
>
> In considering the above, your actions have caused irreparable damage to the mutual relationship of trust required to maintain the employment relationship. As such, in accordance with the authority vested in me pursuant to section 12 (1) c) of the *Financial Administration Act*, your employment with the Department of Citizenship & Immigration is terminated . . . .
>
> [Emphasis added.]

In light of the record as a whole, that letter illustrates that the applicant's misconduct caused irreparable damage to his relationship of trust with his employer and demonstrates that the applicant's employer considered the mitigating circumstances of the applicant's case.

[67] The applicant cheated on his exam and thus betrayed the trust of his employer. The public service is a work environment where the integrity and honesty of public servants play a necessary role in retaining public confidence. The disciplinary action imposed upon the applicant was harsh, but it was not unreasonable given the workplace in which he was employed.

D. *Issues analyzed on a correctness standard*

(1) Reasonable apprehension of bias

[68] The applicant maintains that the adjudicator exhibited bias. As the respondents accurately explained and according to the Supreme Court in *R v S (RD)* at para 106, the notion of bias can be defined as follows:

> In common usage bias describes a leaning, inclination, bent or predisposition towards one side or another or a particular result. In its application to legal proceedings, it represents a predisposition to decide an issue or cause in a certain way which does not leave the

> judicial mind perfectly open to conviction. Bias is a condition or state of mind which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case.

[69] In *Bank of Montreal v Payne*, 2012 FC 431 at paras 51-52, Justice Rennie summarizes the applicable standard for this issue:

> The test for establishing a reasonable apprehension of bias of the decision-maker was restated by the SCC in *R v S (RD)*, [1997] 3 SCR 484 at para 111: a reasonable apprehension of bias exists where a reasonable and informed person, with knowledge of all the relevant circumstances, viewing the matter realistically and practically, would conclude that the decision maker's conduct gives rise to a reasonable apprehension of bias. The decision-maker does not need to have actually been biased; rather a reasonable apprehension of bias is sufficient for there to have been a violation of procedural fairness.
>
> In determining if there is a reasonable apprehension of bias the Court is to consider whether an informed person would think that it is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly: *Committee for Justice & Liberty v Canada (National Energy Board)* (1976), [1978] 1 SCR 369; and *R v S (RD)*, above. Adjudicators are presumed to be impartial and thus a high standard of proof is required to establish a reasonable apprehension of bias: *R v S (RD)*, above at para 158.

[70] A party who alleges bias on the part of a decision-maker has the onus of proving it and the threshold of proof is a high one (*Rafizadeh v Toronto Dominion Bank*, 2013 FC 781 at para 16; *Farah v Sauvageau Holdings Inc*., 2011 ONSC 1819 at paras 89-90).

[71] In this case, the applicant argues that the adjudicator breached her duty of neutrality and independence. That statement by the applicant is based on, in particular, the fact that the adjudicator apparently demonstrated a lack of neutrality by stating the following: [TRANSLATION]

"I would add that given the nature of the duties of pre-removal risk assessment officers and the impacts of their decisions on claimants' lives, the employer must be able to fully trust its employees". In my opinion, the adjudicator simply exercised her powers by drawing conclusions from the facts before her.

[72] The applicant also argues that the adjudicator exhibited bias by asking him to shorten his testimony to be able to go to a funeral. However, the applicant submitted no evidence demonstrating that the adjudicator actually shortened his testimony simply to go to a funeral. Furthermore, the applicant maintains that the adjudicator erred by objecting to continuing the arguments in Ottawa to allow him to complete his testimony. First, the adjudicator's decision and the record as a whole reflect that she had ample information to render a complete and intelligible decision. Second, the applicant does not state which evidence he would have presented in Ottawa to influence the adjudicator's findings. Finally, the respondent argues that the applicant's lawyer at the time of the adjudication process did not object to any aspect of the proceedings, and the applicant does not dispute this. In my opinion, the adjudicator was merely exercising her case management authorities.

[73] Moreover, the evidence submitted by the applicant is not sufficient to give rise to a reasonable apprehension of bias in a right-minded, informed individual. I am of the view that the applicant failed to meet the evidentiary burden required. With respect, the applicant seems to confuse the adjudicator's case management authorities and discretion with the notion of bias.

(2) A fair hearing

[74] The applicant maintains that the adjudicator violated his right to a fair hearing by asking him her own questions. The applicant states that the adjudicator [TRANSLATION] "compelled the applicant to testify against himself" by questioning him on his potential presence in Ms. Lasonde's office at 12:09 p.m. on August 7, 2009. With respect for the applicant's position, the adjudicator was simply exercising her powers according to subsection 226(1) of the Act. In addition and as stated above, the lawyer who was representing the applicant at the time of the adjudication process did not object to any aspect of the proceedings. In light of the whole of the record and of the arguments of the applicant, I am of the view that the applicant was provided a fair hearing.

(3) Violation of language rights

[75] In my opinion, there is no doubt that the applicant's allegation regarding the violation of his language rights merits being taken seriously. I agree with the adjudicator that the applicant should have been able to express himself in French during the investigation. However, the applicant is seeking judicial review of the adjudicator's decision. As pointed out by the respondent, the grievance process before an adjudicator is not a form of quasi-judicial review because the adjudicator hears the matter *de novo* (subsection 226 (1) of the Act; *McBride* at paras 43-45; *MacDonald v City of Montréal*, [1986] 1 SCR 460 at para 122; *Pagé* at para 21). Thus, the applicant had the opportunity to be heard *de novo* in the language of his choice, that is, French.

[76] Furthermore, the applicant does not specify how the fact that the investigation was conducted in English could have impacted the adjudicator's findings. In light of the record considered as a whole, I agree with the respondent's argument that the adjudicator based her decision on all of the facts presented at the hearing and not on the employer's opinions.

VII. Conclusion

[77] The application for judicial review must be dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed with costs.

"George R. Locke"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-380-14
STYLE OF CAUSE:	MOHAMED BALIKWISHA PATANGULI v DEPUTY HEAD (DEPARTMENT OF CITIZENSHIP AND IMMIGRATION)
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	SEPTEMBER 18, 2014
JUDGMENT AND REASONS:	LOCKE J.
DATED:	DECEMBER 12, 2014

APPEARANCES:

Mohamed Balikwisha Patanguli	FOR THE APPLICANT (SELF-REPRESENTED)
Martin Desmeules	FOR THE RESPONDENT

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