

Federal Court



Cour fédérale

Date: 2016122

Docket: T-400-16

Citation: 2016 FC 1408

Ottawa, Ontario, December 22, 2016

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

RICHARD TUDOR PRICE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Richard Tudor Price, seeks judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 (FCA) of the February 12, 2016 decision of Dr. Brian Gray, Assistant Deputy Minister (ADM), Agriculture and Agri-Food Canada (AAFC). Dr. Gray allowed the original grievance filed by Mr. Tudor Price in 2011 pursuant to section 208 of the *Public Service Labour Relations Act*, SC 2003, c 22, s 2 (PSLRA) and provided the remedy originally requested.

I. Overview

[2] Mr. Tudor Price seeks judicial review of Dr. Gray's decision because, in his view, he was only partially successful. He argues that Dr. Gray's decision, albeit in his favour, is not reasonable because: Dr. Gray restricted his determination to the original grievance and found that additional allegations, arguments, and requested remedies were beyond the scope of the grievance: and, Dr. Gray's reasons for granting the grievance do not explain how Dr. Gray reached the decision and are unintelligible.

[3] Mr. Tudor Price submits that information provided to him following his June 2011 retirement from AAFC shed a different light on the situation as he knew it at the time and revealed, among other things, deceit and bad faith by senior managers related to his 2010-2011 performance appraisal. He now argues that his 2011 resignation should be null and void and that he should be reinstated to his former position with retroactive pay, in addition to several other remedies, including damages.

[4] While it is unusual to seek judicial review of a successful decision, it appears that Mr. Tudor Price wants another opportunity to have his additional allegations and expanded grievance addressed. He suggests that this Court could provide specific directions for a redetermination of his grievance and / or declaratory relief requiring a new decision-maker to consider his additional allegations and remedy requests, or to direct that additional remedies be provided.

[5] Although Mr. Tudor Price is clearly dissatisfied with the conduct of senior managers at AAFC during the last years of his long public service career, and is dissatisfied with the grievance process, this application for judicial review focusses only on whether the decision of Dr. Gray is reasonable.

[6] For the more detailed reasons that follow, I find that Dr. Gray's decision is reasonable. Dr. Gray reasonably found that additional allegations raised by Mr. Tudor Price were beyond the scope of the original grievance, that the time limits for amending the grievance had passed, and that AAFC had not consented to amend the grievance. Dr. Gray also reasonably found that Mr. Tudor Price's original grievance should be allowed. Although Dr. Gray's reasons are concise, the reasons permit the Court to determine that all the evidence was considered and understood. The reasons provided by Dr. Gray captured the essence of Mr. Tudor Price's original grievance, as amended in October 2011. Dr. Gray provided the corresponding and appropriate remedy.

[7] The remedies Mr. Tudor Price continues to request are clearly duplicative. Now that he has achieved what he first sought – a “succeeded” performance rating and adjustments to his salary and pension – remedies corresponding to the additional allegations, even if these had been established in the proper forum, do not follow. In his words, the *quid pro quo* has been fulfilled. He cannot receive both retroactive performance pay plus salary and pension adjustments and also be reinstated retroactively with salary for the period since 2011 (when he was not working and was in receipt of his pension).

[8] Moreover, Mr. Tudor Price's other allegations, including deceit and bad faith by AAFC, were addressed by the Public Service Labour Relations Board (the PSLRB) in 2012 and were found to be without merit. This Court confirmed the PSLRB decision.

[9] Mr. Tudor Price has sought judicial review on three previous occasions, all related to decisions arising from the same set of circumstances. He also advised the Court that he continues to pursue other proceedings, including an application for judicial review of the dismissal of a subsequent grievance which makes the same allegations against AAFC of bad faith, misfeasance in public office, and other torts.

[10] Dr. Gray's decision provides the remedy that Mr. Tudor Price initially sought and restores him to the position he had expected to be in at the time of his retirement. Mr. Tudor Price should consider accepting the success he has achieved on his grievance. Finality is in the best interests of both parties.

[11] The reasons for judgment which follow address the majority of Mr. Tudor Price's submissions, all of which have been carefully considered and, as a result, are lengthy.

II. Background

[12] To provide context, a summary of Mr. Tudor Price's grievance proceedings is provided. A similar description was provided by Justice Elizabeth Heneghan in *Price v Canada (Attorney General)*, 2015 FC 696 [*Price 2015*] and by Justice Simon Fothergill in *Price v Canada (Attorney General)*, 2016 FC 649 [*Price 2016*].

[13] Mr. Tudor Price joined the Public Service in 1975. He began working at AAFC in 1982 and was employed at the executive level (EX 1) since 1986.

[14] Executives in the Public Service are assessed annually. The Performance Management Program for Executives sets out several performance ratings from “unable to assess” to “surpassed” along with criteria to determine which rating should apply. The ratings are used to determine performance awards provided to those at the top of their salary range.

[15] In 2010, Mr. Tudor Price was in the process of negotiating a pre-retirement deployment to another Branch, which was contingent on his undertaking to retire within two years. In the course of discussions about his performance rating for 2009-10, he met with Ms. Catherine MacQuarrie, then ADM, Human Resources. Mr. Tudor Price recounts that he and ADM MacQuarrie agreed that his 2009-2010 performance rating of “succeeded –” (i.e. succeeded minus) would be upgraded to “succeeded.” They also agreed that if he received positive performance reviews from the two Directors-General to which he reported for the 2010-2011 fiscal year, his performance rating for 2010-2011 would be “succeeded” and he would retire by June 30, 2011. Mr. Tudor Price referred to this as “immunity” from a lower rating.

[16] Mr. Tudor Price retired on June 30, 2011.

[17] On August 2, 2011, he was advised that his performance rating for the 2010-11 review period was “succeeded –”. This resulted in a performance award that was \$4,760 less than that for a “succeeded” rating and would affect his pension going forward.

The Original Grievance

[18] On August 5, 2011, Mr. Tudor Price submitted a grievance by email requesting that his performance rating be changed to “succeeded.” He amended the grievance via email on October 4, 2011.

[19] His email indicated that the “succeeded –” rating for 2010-11 conflicted with the agreement he made with ADM MacQuarrie. He stated that his letter of resignation was conditional on implementation of the agreement.

[20] Mr. Tudor Price requested that his 2010-11 rating be changed to “succeeded,” that his email records be preserved pending resolution of the grievance, and that information be provided on next steps in the event his grievance was denied.

[21] On September 30 and October 4, 2011, Mr. Tudor Price sent emails to ADM Steve Tierney challenging the reason that had been given for the “succeeded –” rating, which related to concerns about projects with Saskatchewan and Newfoundland. Mr. Tudor Price noted that these concerns were not raised with him prior to his performance appraisal.

[22] Mr. Tudor Price’s October 4, 2011 email states: “I would like the inaccuracy of these allegations, the unfair way in which they were put to ADMs without my knowledge or feed-back and the unjustified damage to my reputation to be considered as part of the grievance.”

The First Decision, the PSLRB decision and the Applications for Judicial Review in 2013 and 2015

[23] Mr. Tudor Price's grievance was denied on February 24, 2012, by Ms. Johanne Bélisle, ADM, Human Resources Branch.

[24] Mr. Tudor Price then sought to refer his grievance to the PSLRB. The PSLRB determined that it did not have jurisdiction under 209(1) the *Public Service Labour Relations Act*, SC 2003, c 22, s 2 (PSLRA) to adjudicate a performance appraisal or performance pay grievance. The Board found no evidence of bad faith, disguised discipline, or termination for any other reason on the part of AAFC, which might otherwise have brought the grievance within the scope of section 209 (*Tudor Price v Deputy Head (Department of Agriculture and Agri-Food)*, 2013 PSLRB 57 [*Price 2013*]).

[25] Justice Mary Gleason dismissed Mr. Tudor Price's application for judicial review of the PSLRB decision without prejudice to his right to seek judicial review of the AAFC's final level grievance decision (*Richard Tudor Price v Treasury Board (Canada)(Agriculture and Agri-Food Canada)* (31 March 2014), Ottawa T-1074-13 (FC) [*Price 2014*]). Justice Gleason found that the PSLRB had not erred in determining that the grievance was non-adjudicable as it was not about a termination or a disciplinary action.

[26] Mr. Tudor Price was granted an extension of time to seek judicial review of the final level grievance decision and did so.

[27] On June 1, 2015, Justice Heneghan found that ADM Bélisle had relied on documents that had not been disclosed to Mr. Tudor Price, specifically, the Grievor Performance Explanation and, as a result, there was a breach of procedural fairness (*Price 2015*). Justice Heneghan set aside the decision, noting that “the matter will be re-determined in accordance with these reasons” (para 38).

[28] The grievance was re-determined by Dr. Gray, following a re-hearing in January 2016.

Mr. Tudor Price’s submissions to Dr. Gray

[29] Mr. Tudor Price prepared a 27-page written presentation for the re-hearing of his grievance. As there is no transcript of the re-hearing, the Respondent agrees that this reflects Mr. Tudor Price’s submissions to Dr. Gray.

[30] Mr. Tudor Price’s submissions included a very detailed account of the agreement with ADM MacQuarrie regarding his 2009-2010 and 2010-2011 performance ratings, his notification of the “succeeded –” rating (after his retirement), and the various explanations given to him by senior management.

[31] Many of the submissions related to his 2009-2010 performance rating, which was not the subject of the grievance. Among the other issues,

- Mr. Tudor Price disputed the basis for his “succeeded –” rating;

- Mr. Tudor Price asked Dr. Gray to find that his employment ended due to the actions of AAFC senior managers from April 2010 to June 2011 which, as a whole, amounted to obtaining his resignation by deceit. This included by providing false information to him in bad faith, which voided his resignation, damaged his reputation, and caused him costs and damages; and
- Mr. Tudor Price asserted that the triggering event was an earlier decision to downgrade his 2009-10 performance rating. He describes his agreement with ADM MacQuarrie as a “trade off” in which he gave up the chance to work in another branch, gave up accumulated sick leave, and undertook to retire in June 2011, in exchange for immunity from having his performance rating for 2009-2010 and 2010-2011 downgraded. He stated that if he had not been misled about the criteria for his 2009-2010 rating, he may not have accepted this agreement. He also stated that if he had been advised before he retired that his 2010-2011 performance rating would be “succeeded –”, he would “probably” have withdrawn his letter of resignation.

[32] Mr. Tudor Price requested several remedies; including,

- that Dr. Gray find that his “termination” was involuntary;
- reinstatement to an EX 1 position retroactive to June 2011;
- salary, benefits, and pay at risk for the years 2011-2012 to 2015-2016, with interest;

- the reversal of his 2010-2011 rating, that the “succeeded” rating apply, that the difference in performance pay (\$4,760) be paid with interest, and that his pension be adjusted accordingly;
- costs for all his litigation;
- travel costs and home office costs totalling \$24,000; and
- general, special and aggravated damages for defamation, damage to his reputation, fraudulent or negligent misrepresentation, and negligent investigation (all these in addition to the amounts set out above), misfeasance in public office, including obstruction of process, and bad faith breach of contract.

The Action in Tort: Price 2016

[33] Before receiving Dr. Gray’s decision, Mr. Tudor Price launched an action and filed a statement of claim alleging tortious conduct by AAFC including that the “actions of AAFC officials in processing his grievance in 2011 constitute misfeasance in public office.” The Attorney General moved to strike the statement of claim.

[34] In *Price 2016* (above), Justice Fothergill found (at para 34):

I am satisfied that the grievance process found in the PSLRA provides the only forum in which Mr. Tudor Price may seek relief for the mistreatment he allegedly suffered at the hands of his supervisors and employer. It is therefore appropriate to strike the statement of claim in its entirety without leave to amend (*Bron*). Whether the AAFC properly adjudicated all of the allegations and remedies advanced by Mr. Tudor Price in his grievance is another

matter, and will be addressed in his concurrent application for judicial review (Court File No. T-400-16).

T- 400-16 refers to the present application for judicial review of Dr. Gray's decision.

III. The Decision Under Review

[35] In his February 12, 2016 decision, Dr. Gray allowed the original grievance and found that Mr. Tudor Price's performance rating for the 2010-2011 review period should be changed to "succeeded" and that his salary and pension benefits be adjusted accordingly.

[36] Dr. Gray noted that the subject of the grievance was the "succeeded –" performance rating that did not reflect Mr. Tudor Price's agreement with ADM MacQuarrie that his rating would be no less than "succeeded." Dr. Gray acknowledged the October 2011 amendment to the grievance requesting that the reasons for the rating, the manner in which they were conveyed to other AAFC ADMs, and the alleged damage to Mr. Tudor Price's reputation, be considered as part of his grievance.

[37] Dr. Gray noted that Mr. Tudor Price was provided with all the documents that were before the decision-maker, including the Grievor Performance Explanation, which had not been previously disclosed. Mr. Tudor Price was also provided with an opportunity to respond.

[38] Dr. Gray noted that he was only responding to the August 5, 2011 grievance, as amended on October 4, 2011. Dr. Gray acknowledged that Mr. Tudor Price raised additional allegations and claimed additional remedies at the re-hearing that were not raised in his original grievance or

the October 2011 amendment. Dr. Gray accepted that AAFC had not consented to any further amendment. Dr. Gray noted Mr. Tudor Price's request for costs, but found that the forum for requesting costs was at the applicable Court or Board and that costs had been awarded by the Federal Court in June 2015.

[39] Dr. Gray stated that he considered "all of the information provided with respect to the re-hearing of your grievance, including your arguments presented regarding the 2010-2011 performance rating. I find that your performance rating should have been communicated to you with more explanation and clarification. As a result, I am granting your original grievance and the corrective action requested."

[40] Dr. Gray directed that Mr. Tudor Price's performance rating be changed to "succeeded" and the appropriate adjustments to salary and pension be made.

IV. The Issues

[41] Mr. Tudor Price submits that Dr. Gray erred by failing to deal with the allegations of bad faith and damage to his reputation, failing to deal with the allegation that his resignation was invalid because it was induced by deceit, supporting AAFC's refusal to amend his grievance to include additional allegations providing inadequate reasons, and failing to consider additional remedies, including reinstatement and damages for injury to his reputation.

[42] Mr. Tudor Price submits that the Court should allow his application for judicial review and remit his grievance to AAFC for a full *de novo* hearing with directions to consider all of his allegations and requested remedies.

[43] Alternatively, he submits that it may be pointless to remit his grievance once again for redetermination because the grievance process is dysfunctional. He submits that this application for judicial review should be converted into an action for damages pursuant to section 18.4(2) of the FCA to permit him to advance his claims against AAFC for damages for misfeasance in public office and other torts.

[44] Although Mr. Tudor Price raises many issues, the relevant issue to be determined on this application for judicial review is whether Dr. Gray's decision is reasonable. First, whether it was reasonable for Dr. Gray to restrict his determination to the original grievance; and second, whether Dr. Gray's decision to allow the original grievance was reasonable, in the sense that the reasons were intelligible and conveyed why the decision was reached.

V. The Standard of Review

[45] The standard of reasonableness applies to final level grievance decisions (*Peck v Parks Canada*, 2009 FC 686 at para 20; *Hagel v Canada (Attorney General)*, 2009 FC 329 at paras 19-27 *aff'd* in *Hagel v Canada (Attorney General)*, 2009 FCA 364).

[46] The role of this Court on judicial review is to determine whether the decision:

[...] falls within ‘a range of possible, acceptable outcomes which are defensible in respect of the facts and law’ (*Dunsmuir*, at para. 47). “There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome

(*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59)

[47] The inadequacy of the reasons for a decision is not an independent ground to allow an application for judicial review. In *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*], the Supreme Court of Canada elaborated on the requirements of *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], noting (at paras 14-16) that the decision-maker is not required to set out every reason, argument or all the details in the reasons. Nor is the decision-maker required to make an explicit finding on each element that leads to the final conclusion. The reasons are to “be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes” (para 14). In addition, where necessary, courts may look to the record “for the purpose of assessing the reasonableness of the outcome” (para 15).

[48] Mr. Tudor Price pointed to the more recent decision of the Supreme Court of Canada in *Canada (Attorney General) v Igloo Vikski Inc*, 2016 SCC 38 at para 18 [*Igloo Vikski*] where Justice Brown described the reasonableness standard of review as follows:

Reasonableness review is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome. The reasoning must exhibit “justification, transparency and intelligibility within the decision-making process”: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47. The substantive outcome and the

reasons, considered together, must serve the purpose of showing whether the result falls within a range of possible outcomes: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14. While the adequacy of a tribunal's reasons is not on its own a discrete basis for judicial review, the reasons should "adequately explain the bases of [the] decision": *Newfoundland Nurses*, at para. 18, quoting from *Canada Post Corp. v. Public Service Alliance of Canada*, 2010 FCA 56, [2011] 2 F.C.R. 221, at para. 163 (per Evans J.A., dissenting), rev'd 2011 SCC 57, [2011] 3 S.C.R. 572.

[Emphasis added]

VI. Is Doctor Gray's decision to restrict his determination to the original grievance reasonable?

The Applicant's Submissions

[49] Mr. Tudor Price argues that Dr. Gray erred in finding that AAFC's failure to consent to any further amendment to the grievance was reasonable.

[50] He submits that the formal requirements for grievances are not practical and are inconsistent with the overall policy that grievances should be resolved informally and quickly. He notes that his original grievance was not required to be in any particular form and questions why AAFC should now rely on formal time limits. He adds that it is common for grievors to refine their grievance up to the time it is decided.

[51] He notes that Justice Heneghan found a breach of procedural fairness in the first determination of his grievance and ordered that "the matter" be re-determined (*Price 2015* at

para 38). He submits that “the matter” is broader than his originally worded grievance and that he was entitled to raise new allegations, arguments, and evidence related to “the matter.”

[52] Mr. Tudor Price relies on *Chopra v Canada (Attorney General)*, 2015 FCA 206 at para 8 [*Chopra*], where the Court of Appeal found that the redetermination would be a new decision and that the appellant could raise any issues at the redetermination hearing.

[53] Mr. Tudor Price also, or alternatively, submits that his additional allegations are not really new. He submits that the nature of his grievance did not change and that AAFC was aware of the allegations. He relies on *Canada v Rinaldi*, [1997] FCJ No 225 (QL) (TD) [*Rinaldi*], where the Court compared the wording of the original grievance and the allegations made at the adjudication stage and found that the nature of the grievance had not changed, noting that the employer was aware of the allegations all along.

[54] He adds that his request for reinstatement is not a new remedy because this was implicitly part of his original grievance; his resignation was the *quid pro quo* for receiving a “succeeded” rating.

[55] Mr. Tudor Price submits that AAFC was aware of his allegations from the time of his reference to the PSLRB. In addition, he prepared and sent an “outline” of the allegations, including deceitfulness and duplicity on the part of the AAFC, to Ms. Christine Buwalda, the AAFC Human Resources Advisor, on September 8, 2015. He argues that these allegations better

reflect the conduct that he is now fully aware of and that more extensive remedies are required to right the alleged wrongs.

[56] Mr. Tudor Price acknowledges that, in the exchange of correspondence with AAFC in the fall 2015 regarding the redetermination hearing, AAFC indicated that his new allegations would not be considered. He acknowledges that he understood that AAFC would narrow the grievance to exclude the issues that arose from information disclosed to him after his first grievance hearing. He explains that this is why he launched an Action against AAFC to seek relief for, among other things, AAFC's misfeasance in public office, negligence, and bad faith.

[57] Mr. Tudor Price further explains that he submitted a new grievance to AAFC based on the decision of Justice Fothergill (*Price 2016*), which struck his statement of claim and found that his allegations arose as an employee and, therefore, the remedies he sought could only be addressed within the grievance process. The new grievance alleges, among other things, bad faith and deceit in inducing his resignation, which are the same allegations set out in the statement of claim that was struck. That grievance was dismissed without a hearing. He has sought judicial review of that dismissal.

[58] He explains that he continues to advance the same allegations in the context of the present application for judicial review because Justice Fothergill noted that this was the forum to determine whether Dr. Gray properly adjudicated all of the allegations and remedies.

The Respondent's Submissions

[59] The Respondent submits that Dr. Gray reasonably confined his decision to the allegations in the original 2011 grievance and the remedies sought by Mr. Tudor Price at that time. The allegations of deceit and misfeasance in public office amount to an entirely new grievance, are out of time, and were, in any case, addressed by the PSLRB.

[60] The Respondent notes that the *Public Service Labour Relations Regulations*, SOR/2005-79 prescribe a time limit of 35 days to file a grievance from the date of knowing of the alleged contravention. The short time frame is intended to permit expeditious determination or resolution.

[61] The time limits may be extended on agreement of the parties or by the application of one of the parties to the Chair of the Public Service Labour Relations and Employment Board (formerly the PSLRB). The Respondent notes that AAFC accepted Mr. Tudor Price's amendment in October 2011, but clearly did not accept his 2015 "outline," which included many new allegations. Ms. Buwalda advised Mr. Tudor Price, in writing, three months in advance of his January 2016 hearing, that the new allegations would not be considered. There was no agreement to extend the time limit, nor did Mr. Tudor Price make any application to the Chair of the PSLRB to extend the time limit.

[62] Dr. Gray acknowledged the additional allegations, but reasonably found that AAFC had not consented to deal with these issues.

[63] Moreover, a grievor cannot keep adding new claims. To allow the new allegations as part of the grievance would be contrary to the principle of finality. It would be prejudicial to AAFC to be continually called upon to answer new allegations.

[64] The Respondent disputes Mr. Tudor Price's submission that employees can alter the nature of their grievance during the grievance process (*Boudreau v Canada (Attorney General)*, 2011 FC 868 at para 20).

[65] The Respondent also notes that Mr. Tudor Price's continuing allegations of bad faith, deceit, discipline, and misfeasance in public office are not supported by any evidence. Mr. Tudor Price's claims are based only on his perception or misperception of how the ratings were determined and his speculation about who told what to whom.

[66] Moreover, the PSLRB considered these claims in detail, rejected them, and concluded that Mr. Tudor Price's retirement from the Public Service was voluntary.

[67] With respect to the remedies requested, the Respondent submits that Mr. Tudor Price has not established that he suffered any damages as a result of his "succeeded –" rating that have not been fully addressed by Dr. Gray's decision.

Dr. Gray's decision to restrict his determination to the original grievance is reasonable

[68] Dr. Gray reasonably found that Mr. Tudor Price did not comply with the prescribed timelines to seek an amendment to his grievance. The AAFC did not consent to amend the

August 2011 grievance beyond the October 2011 amendment, nor did Mr. Tudor Price apply to the PSLRB Chair for an extension of time to pursue a fresh grievance. The time limits are not needless formalities. They are essential to provide a framework for the resolution of grievances and to permit the respondent to know what they must respond to.

[69] Mr. Tudor Price acknowledged that he understood that AAFC would not consider the additional allegations; hence, he launched an Action to advance the same claims. He also acknowledged that he understood Justice Fothergill's decision, which struck his Statement of Claim; yet, he continues to argue that these same allegations should be considered in this judicial review and that Dr. Gray erred in not considering them.

[70] The additional allegations raised by Mr. Tudor Price, although tangentially arising from his dissatisfaction with his 2011 performance rating and the subsequent grievance process, were not the issues raised in the original grievance. Contrary to Mr. Tudor Price's submissions, these additional allegations are of a different nature than his original grievance. These are not refinements of the original grievance, which was about AAFC renegeing on the agreement concerning his performance rating. Even if AAFC had informal notice of the additional allegations due to Mr. Tudor Price's lengthy submissions in his applications for judicial review, this does not oblige AAFC to address them. A grievor cannot continue to add new and different allegations up to the date of the hearing of the grievance. Such an approach makes it impossible for a respondent to respond and it usurps both the informal and more formal grievance process.

[71] Mr. Tudor Price's submission that his grievance should be broadly construed because Justice Heneghan's decision (*Price 2015*) directed that "the matter" be redetermined is based on a misunderstanding of what is meant by "the matter." That decision was based solely on a breach of procedural fairness. Justice Heneghan used the customary wording to direct that the same issue or decision found to be in error on judicial review due to a breach of procedural fairness be redetermined, not that a different or expanded issue or decision be determined. "The matter" ordered to be redetermined was the original grievance of August and October 2011.

[72] Contrary to Mr. Tudor Price's submissions, Justice Heneghan did not endorse his submissions. Although Justice Heneghan found that the disclosure of the Grievor Performance Explanation could have influenced the disposition of the grievance, this is not an endorsement of Mr. Tudor Price's submissions on the merits of his allegations. Justice Heneghan clearly stated that it was not necessary for her to address the reasonableness of the decision (*Price 2015* at para 32).

[73] *Chopra* (above) does not support Mr. Tudor Price's submission that Dr. Gray erred. Mr. Chopra had raised several arguments in support of his application for judicial review and the Federal Court granted the application based on one argument, without addressing the others, and remitted the matter back to the same adjudicator for redetermination. The Court of Appeal found that the redetermination of Mr. Chopra's grievance would be a new decision and that he could re-raise the issues that the Federal Court judge did not address.

[74] Contrary to Mr. Tudor Price's submission, *Chopra* does not support his argument that he was entitled to raise new allegations at the redetermination of his grievance. *Chopra* does not establish a principle that new issues can be raised on a redetermination of a grievance because the redetermination will yield a new decision. The point in *Chopra* was that the arguments that had been advanced but not addressed on judicial review could be raised again in the redetermination. In the present case, among other differences, Mr. Tudor Price does not seek to raise new arguments in support of his original grievance; rather, he seeks to raise new allegations.

[75] Nor does Mr. Tudor Price's reliance on *Rinaldi* (above) support his position that Dr. Gray erred by failing to address the additional allegations.

[76] In *Rinaldi*, Justice Marc Noël noted that the Court should look to the wording of the grievance to determine whether the allegations made at the adjudication stage "so altered [the] original grievance as to change its nature and make it a new grievance" (at para 26). Justice Noël concluded that Mr. Rinaldi's two grievances, submitted at the same time, clearly conveyed that he considered both his lay-off and the abolishment of his position as unlawful disciplinary action.

[77] The context (for example, adjudication) and the facts in *Rinaldi* are significantly different. Mr. Tudor Price's original grievance is about AAFC's failure to honour his agreement with ADM MacQuarrie for a "succeeded" performance rating. Mr. Tudor Price has attempted to re-characterize his grievance as a termination grievance based on information he gathered after

he filed his grievance, but these allegations are of a different nature than the original grievance. In addition, AAFC did not have notice of these allegations in 2011; rather, the allegations evolved and expanded up to the time of the re-hearing in 2016.

[78] Mr. Tudor Price acknowledged in his submissions to the Court that his dispute is now about whether his resignation was obtained by deceit and, as a result, is void, and whether additional remedies should be provided. In my view, he has acknowledged that the nature of his grievance has significantly changed.

[79] Mr. Tudor Price's own evidence is that he had planned to retire and had first negotiated a pre-retirement deployment in 2010, premised on his retirement in 2011. This further undermines his allegations that his resignation was induced by the conduct of AAFC.

[80] In addition, it was reasonable for Dr. Gray to refuse to consider allegations that had already been adjudicated by the PSLRB in 2013. As noted above, the PSLRB heard *viva voce* evidence, and clearly rejected the allegations in *Price 2013*. The Board noted at paras 48 & 52:

I find that the grievor's bad faith argument is based on a series of assumptions he made, none of which were established by any compelling evidence, and that it clearly lacks the necessary credence to bring his grievance within the scope of section 209 of the *Act*.

[...]

What transpired in this case was not the work of senior managers motivated by bad faith or a desire to punish or discipline an employee for reasons unrelated to his performance. Rather, it was the collective effort of a Committee specifically mandated to review and approve the performance assessments of a group of executives and to ultimately assign appropriate performance ratings to each of them, subject to the deputy minister's approval.

[Emphasis added]

[81] Justice Gleason dismissed Mr. Tudor Price's application for judicial review of the PSLRB decision noting that "the PSLRB's determination that the case did not concern a termination or a disciplinary action is unassailable" (Price 2014 at 3).

[82] This application for judicial review is not the forum to re-argue that AAFC acted in bad faith. That was put to rest by the PSLRB. Moreover, these tort claims have specific standards of proof which require far more than bare assertions based on dissatisfaction with management's conduct.

[83] Mr. Tudor Price's grievance was based on AAFC renegeing on the agreement to give him a "successful" performance rating. The information Mr. Tudor Price gathered about how performance ratings are established and the additional criteria regarding the scope and complexity of the work performed relative to others at the same group and level does not change the basis for his grievance. Whether Mr. Tudor Price was unaware of the criteria for performance ratings or whether the criteria changed without notice after his Performance Management Agreement was drafted is of little relevance to the basis of his grievance. He based his grievance on the failure of AAFC to honour the agreement that he would be given a "succeeded" rating for 2010-2011 and that he would resign in June 2011, not on whether his actual performance merited a "succeeded" rating based on objective criteria.

[84] Dr. Gray provided the remedy that corresponded to the original grievance i.e. AAFC's failure to honour the agreement. If such an agreement existed – which was not admitted by

AAFC – the agreement would be fulfilled by giving Mr. Tudor Price a “succeeded” performance rating. This is the very remedy Mr. Tudor Price sought and that Dr. Gray ordered. Although Dr. Gray did not make any finding that the agreement existed, he implicitly accepted that Mr. Tudor Price’s understanding of the agreement should be respected. Dr. Gray’s role was then to restore Mr. Tudor Price to the state he would or should have been in at the time of his retirement, based on the alleged agreement.

VII. Is Dr. Gray’s decision to allow the original grievance reasonable; are the reasons intelligible?

The Applicant’s Submissions

[85] Mr. Tudor Price submits that, although one of his remedies was *partially* granted, the reasons do not explain how Dr. Gray reached his decision; as a result, the decision is unreasonable.

[86] Dr. Gray found that Mr. Tudor Price’s performance evaluation should have been communicated with “more explanation and clarification.” Mr. Tudor Price argues that this finding does not address his allegation that AAFC deliberately withheld information about his performance rating until after his resignation and, in so doing, induced his resignation by deceit.

[87] Mr. Tudor Price submits that Dr. Gray’s sparse and non-responsive reasons do not permit the Court to determine if the decision is justified, transparent, and intelligible. He relies on *Igloo Vikski*, above at para 18, regarding the application of the principles in *Dunsmuir* and

Newfoundland Nurses. He submits that Dr. Gray's reasons do not explain the basis of the decision, and the decision is, therefore, not reasonable.

The Respondent's Submissions

[88] The Respondent submits that Dr. Gray explained why he allowed the grievance and the reasons are sufficient to permit the Court to determine that the decision is reasonable.

[89] The Respondent notes that the adequacy of reasons is not a stand-alone basis to challenge the decision. The reasons for the decision must be read as a whole and with regard to the record.

[90] The Respondent further submits that administrative officers tasked with making decisions are not required to give detailed reasons to the same extent as expected of a board or tribunal. Moreover, decision makers, whether officers or boards or tribunals, need not address every issue raised by an applicant. The Respondent points to *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3, where the Supreme Court of Canada noted that:

This Court has strongly emphasized that administrative tribunals do not have to consider and comment upon every issue raised by the parties in their reasons. For reviewing courts, the issue remains whether the decision, viewed as a whole in the context of the record, is reasonable (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708).

The Decision to allow the grievance is reasonable and the reasons permit the Court to make this determination

[91] Dr. Gray's reasons for allowing Mr. Tudor Price's original grievance are succinct, but nonetheless permit the Court to find that the decision is reasonable. In accordance with *Newfoundland Nurses*, the reasons may be read with the record to assess the reasonableness of the outcome. At para 16, the Court summed up its guidance:

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.

[92] The Federal Court of Appeal has noted in both *Lemus et al v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 114 at paras 34-35, and *D'Errico v Canada (Attorney General)*, 2014 FCA 95 at para 13, that in cases involving sparse reasons, the Supreme Court of Canada's decision in *Newfoundland Nurses* remains the guiding authority.

[93] The Supreme Court of Canada in *Igloo Vikski* reiterated the principles in *Dunsmuir* and *Newfoundland Nurses* and confirmed that the adequacy of reasons is not a stand-alone basis for judicial review, but the reasons should "adequately explain the bases of [the] decision" (para 18).

[94] Dr. Gray's reasons permit me to understand why he allowed the original grievance and directed that the "succeeded" rating be given for 2010-11 and that necessary adjustments to Mr. Tudor Price's salary and pension benefits be made. This conclusion is within the range of acceptable outcomes. The reasons, albeit brief, adequately explain the basis of the decision.

[95] Dr. Gray stated that he considered “all the information provided with respect to the re-hearing of [the] grievance, including [the] arguments presented regarding the 2010-2011 performance rating.” Dr. Gray was not required to set out every allegation and argument made by Mr. Tudor Price in the reasons or to make a finding on each (*Newfoundland Nurses* at paras 14-16). Nor was Dr. Gray required to revisit allegations that had been adjudicated before the PSLRB in 2013.

[96] As noted, Mr. Tudor Price’s original grievance was based on AAFC’s failure to respect the agreement he had with ADM MacQuarrie that he would receive a “succeeded” performance rating and he would retire in June 2011. Dr. Gray’s reasons respond to the crux of Mr. Tudor Price’s original grievance. Specifically, that AAFC reneged on a prior agreement, did not advise Mr. Tudor Price of his rating until after he retired, and gave differing explanations about why a lower rating was given.

[97] Dr. Gray’s decision responds to what Mr. Tudor Price asked for – that the agreement be honoured and that the rating should have been communicated to him with more explanation and clarity and, implicitly, in a timely manner. In my view, this succinctly responds to Mr. Tudor Price’s grievance as amended.

[98] The differing reasons provided by AAFC for Mr. Tudor Price’s lower rating, whether valid or not, were not the basis for his grievance. Mr. Tudor Price’s grievance was that the agreement had not been respected. He wanted the *quid pro quo* for his planned retirement in 2011, which was a “succeeded” rating and the adjustment to his salary. As a result of Dr. Gray’s

decision, he got what he asked for. Whether AAFC advised Mr. Tudor Price before his retirement or afterward that his rating was “succeeded –” due to concerns about a particular project or due to a change in the rating criteria, this had little if any bearing on his grievance, which focussed on the failure of AAFC to honour the agreement. But for the agreement, AAFC may have prevailed in justifying the performance rating based on the same criteria that apply to all other employees. Regardless, and as Dr. Gray noted, AAFC should have explained the rating to Mr. Tudor Price.

VIII. Costs

[99] Mr. Tudor Price represented himself in this matter and advanced many arguments, all of which the Respondent was called upon to address.

[100] The Respondent notes that Mr. Tudor Price’s allegations included serious unsubstantiated claims of fraud and perjury, which are *Criminal Code* offences. The Respondent submits that such bald allegations amount to an abuse of process and justify a higher award of costs.

[101] I agree that such serious claims should not be made lightly and, in this case, they were indeed bald allegations without any evidence to support them. Giving Mr. Tudor Price the benefit of the doubt, perhaps these allegations were made without a complete understanding of the elements of those offences. I note that Mr. Tudor Price did not raise these allegations in his oral submissions.

[102] The Respondent is entitled to costs, but did not submit a Bill of Costs. I exercise my discretion to award costs in a lump sum of \$1,500; although, I am aware that this award does not adequately reflect the costs incurred by the Respondent in responding to this application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

Lump sum costs are awarded to the Attorney General in the amount of \$1,500, inclusive of disbursements and interest.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-400-16

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GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: OCTOBER 5, 2016

JUDGMENT AND REASONS: KANE J.

DATED: DECEMBER 22, 2016

APPEARANCES:

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