

Federal Court



Cour fédérale

Date: 20171219

Docket: T-299-16

Citation: 2017 FC 1169

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, December 19, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

CAROLE PRONOVOST

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

(delivered from the bench on December 12, 2017)

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Assistant Commissioner of the Human Resources Branch [the Assistant Commissioner] of the Canada Revenue Agency (CRA), under section 18.1 of the *Federal Courts Act*, R.S.C. (1985), c F-7. In that decision,

which was delivered on January 19, 2016, the Assistant Commissioner dismissed the grievance filed by the Applicant at the final level of the grievance procedure.

II. Facts

[2] The Applicant has been working at the CRA since August 30, 1993.

[3] On June 2, 2015, the Applicant filed a psychological harassment complaint under the *CRA Preventing and Resolving Harassment Policy* [the Policy] against 11 managers at the CRA's tax services offices in Montréal and Laval.

[4] In her complaint, the Applicant alleges events that took place from 2009 to 2015.

[5] In a letter dated July 20, 2015, an Assistant Commissioner of the Quebec Region [the Assistant Commissioner] of the CRA dismissed part of the allegations in the complaint with respect to 9 of the 11 respondents, given that [TRANSLATION] "these allegations were filed more than a year after the last incident and/or they do not meet the definition of harassment".

[6] In that same letter, the Assistant Commissioner agrees with some allegations regarding the other two respondents under the Policy and informs the Applicant that, to move forward with the process, an investigative mandate will be given to an external investigator.

[7] On August 3, 2015, the Applicant filed a grievance against the decision by the Assistant Commissioner of the Quebec Region. In her grievance, the Applicant argues that all the

allegations in her complaint are admissible under the Policy, as they were not filed more than a year after the date of the last incident, that not more than a year had passed between each of the incidents, that it is ongoing harassment, and that each allegation falls within the definition of harassment. This grievance was sent to the final level.

[8] At the final level, the Applicant also submitted a new argument, i.e., that a competent person must be appointed in accordance with Part XX of the *Canada Occupational Health and Safety Regulations*, SOR/86-304.

III. Decision

[9] On January 19, 2016, the Assistant Commissioner dismissed the grievance filed by the Applicant at the final level of the grievance procedure, justifying her decision as follows:

I carefully examined the circumstances surrounding your grievance and I considered all the elements available in your file.

Following my review, I am satisfied that the allegations regarding each respondent have been examined and assessed by the delegated authority based on the criteria set out in the Guidelines that arise from the Policy. The allegations deemed inadmissible were outside the time limit and/or did not meet the definition of harassment.

As a result, your grievance is dismissed.

[10] That decision is the subject of this application for judicial review.

IV. Issues

[11] In the Court's view, the only two issues are whether the Assistant Commissioner's decision to dismiss the Applicant's grievance is reasonable, and whether the Assistant Commissioner failed in her duty of procedural fairness in making her decision.

[12] Both parties agree that the applicable standard of review for individual grievances submitted under the *Federal Public Sector Labour Relations Act*, S.C. 2003, c 22 is reasonableness (*Hagel v. Canada (Attorney General)*, 2009 FC 329 at paragraph 27).

[13] As for the issue of procedural fairness, the applicable standard of review is correctness (*Canada (Attorney General) v. Sketchley*, 2005 FCA 404 at paragraph 47).

V. Relevant provisions

[14] The Policy defines workplace harassment as follows:

Harassment is a form of misconduct / improper behaviour by an employee that is directed at, and is offensive to, another employee, and which that person knew or ought reasonably to have known, would be unwelcome and cause offence or harm. It comprises objectionable conduct, comment, or display that demeans, belittles, or causes personal humiliation or embarrassment, and any acts of intimidation or threats, which detrimentally affects individual well-being or the work environment.

[15] An excerpt from the *CRA Preventing and Resolving Harassment Guidelines* [the Guidelines] is also relevant:

4. Reviewing and assessing a complaint (acceptance criteria)

...

The delegated manager will accept the complaint if:

- it is filed no later than one year after the date of the last incident, unless it has been determined that the complainant could not do so because of a special circumstance (to be noted in the complaint);
- it describes or outlines the allegation(s) by:
 - identifying the respondent(s);
 - providing the names of any witnesses;
 - describing what the respondent(s) said or did that led to the harassment complaint and providing date(s) of incident(s); and
- the description of the allegation(s) falls within the definition of harassment and, at first appearance, justifies the complaint.

VI. Submissions of the parties

A. *Applicant's arguments*

[16] The Applicant is basically arguing that the Assistant Commissioner's decision to dismiss her grievance is unreasonable. The Assistant Commissioner allegedly violated the Policy and the Guidelines in making her decision.

[17] The Applicant argues that the Assistant Commissioner breached her duty of procedural fairness. The Assistant Commissioner allegedly did not justify her decision dated January 19, 2016, to support the dismissal of certain allegations in the harassment complaint. The Applicant reportedly wanted to receive clarifications about the dismissal of some of her allegations, given that the Assistant Commissioner allegedly did not enclose a detailed analysis with her decision.

B. *Respondent's arguments*

[18] The Respondent argues that the Assistant Commissioner's decision is reasonable. In fact, the Assistant Commissioner took both the Policy and the Guidelines into consideration to make her decision.

[19] At the final level of the grievance process, the Assistant Commissioner had all the necessary information at her disposal to assess the allegations in the complaint. She also had access to a table entitled [TRANSLATION] "Admissibility of the allegations", prepared by the Assistant Commissioner during the third-level grievance. This table indicates the allegations against each of the respondents, along with the date of the alleged incidents.

[20] According to the Respondent, an application for judicial review of the Assistant Commissioner's decision is not the appropriate vehicle for asking the Court to reassess the facts and evidence on record in a way that is more favourable to her position (*Osborne v. Canada (Attorney General)*, 2005 FCA 412 at paragraph 13).

[21] Unlike the Applicant's allegation regarding the issue of procedural fairness, the Respondent points out that the Assistant Commissioner does not have to justify her decision by referring to all the arguments and the factual details argued by the Applicant. Thus, decision-makers do not necessarily have to provide an explanation at each stage of their reasoning that led them to the final conclusion (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16 [*Newfoundland Nurses*]). The

Assistant Commissioner justified her decision and, as a result, her reasons must be made within the reasonableness analysis (*Newfoundland Nurses*, above, at paragraph 22).

VII. Analysis

[22] For the reasons that follow, the application for judicial review is allowed.

A. *Did the Assistant Commissioner make a reasonable decision?*

[23] The Court considers that the Assistant Commissioner's decision is unreasonable.

[24] It should be noted that since the Applicant submitted a new argument in her grievance at the final level, the record did not support her allegation (*Girard v. Canada (Human Resources and Skills Development)*, 2013 FC 489 at paragraph 26). Thus, the Assistant Commissioner was right in not considering this new argument, since her task consisted in analyzing the impugned decision of the Assistant Commissioner of the Quebec Region regarding the dismissal of certain allegations in the Applicant's complaint. Furthermore, the Assistant Commissioner provided an explanation on that matter in her decision dated January 19, 2016.

[25] There is no need to rule on the arguments raised by the Applicant with respect to the decision dated July 20, 2015, since it is not subject to this application for judicial review.

[26] The Assistant Commissioner had to review the decision dated July 20, 2015, in light of the Policy governing the decision-making process. To arrive at this conclusion, the Assistant

Commissioner failed to review the entirety of the Applicant's record with the necessary care, in accordance with the requirements of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 19 [*Dunsmuir*]; *Newfoundland Nurses*, above; and *Alberta Union (Alberta Union of Provincial Employees v. Lethbridge Community College)*, 2004 SCC 28. The Assistant Commissioner did not assess the allegations against the respondents that were in the Applicant's complaint for psychological harassment. The requirements of a properly drafted decision, however brief, nevertheless require a reasoned overview that shows the justification, transparency, and intelligibility to sufficiently fulfil the duties of a decision-maker (*Dunsmuir*, above, at paragraph 47; *Newfoundland Nurses*, above, at paragraph 9; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, [2011] 3 SCR 654, 2011 SCC 61 at paragraph 52).

[27] For these reasons, the Assistant Commissioner's decision does not fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above, at paragraph 47).

B. *Did the Assistant Commissioner breach her duty of procedural fairness?*

[28] In the Court's view, the duty of procedural fairness was not met in this case.

[29] According to the Policy and the Guidelines, the Assistant Commissioner's reasons are not intelligible and do not provide the Applicant with the reasons—however brief—as to why her complaint was dismissed.

[30] For these reasons, the Court finds that the Assistant Commissioner made an error in law and that she did not provide sufficient reasons to the Applicant for the purposes of an adequate decision with respect to allegations of psychological harassment. There are grounds for our Court to intervene in this application for judicial review.

VIII. Conclusion

[31] This application for judicial review is allowed, and the entire case is referred to another decision-maker to reassess the full matter.

JUDGMENT in T-299-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed; and
2. The Assistant Commissioner's decision to dismiss the Applicant's complaint at the final level is overturned and the matter is deferred for a new determination, without any costs following this decision.

“Michel M.J. Shore”

Judge

Certified true translation
This 16th day of September, 2019

Lionbridge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-299-16

STYLE OF CAUSE: CAROLE PRONOVOST v. CANADA REVENUE AGENCY

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