Federal Court Cour fédérale

Date: 20180411

Docket: T-691-17

Citation: 2018 FC 389

Ottawa, Ontario, April 11, 2018

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

MINA CICALE

Applicant

and

SWISS INTERNATIONAL AIR LINES LTD.

Respondent

and

ME MARK ABRAMOWITZ

Mise-en-cause

JUDGMENT AND REASONS

[1] On September 23, 2014, the applicant, Ms Mina Cicale, filed a complaint against the respondent, Swiss Air International Air Lines Ltd. [Swiss or employer], pursuant to section 240

of the *Canada Labour Code*, RSC 1985, c L-2 [Code], alleging her employment as Country Manager Canada was unjustly terminated on July 31, 2014.

[2] The events that prompted the termination of the applicant's employment at Swiss are not in dispute. At the time, the applicant was paid US$8,500 monthly. She also received a Can$2,500 monthly housing allowance, and a one-time tax advice allowance of US$1,500. Although the position was based in Montreal, she spent about half of her time in Canada, and half in the US for insurance and personal reasons. Around June 2014, her employer discovered that she had been approving an additional Can$2,500 for housing herself. Asked to explain these payments, the applicant was summoned to a meeting on this matter in New York on June 5, 2014. She claimed that there was either an unwritten agreement that she should be receiving this additional amount, or that she authorized this amount to cover a difference in taxes paid and due. Director Patrick Heymann concluded that these payments had to stop; the applicant allegedly threatened the respondent to resign.

[3] On June 12, 2014, the applicant received a letter from the respondent explaining that disciplinary sanctions were justified and how they would be implemented. As such, her assignment in Canada would end on July 31, 2014, and she would instead be offered a US local position. Indeed, on July 16, 2014, she was actually offered a Project Management position in East Meadow, New York, with a monthly US$8,000 salary. The position was a contract due to last until approximately June 30, 2015, after which she was invited to apply on any available internal position. If she refused that offer, her employment with Swiss would end on July 31, 2014.

[4] The applicant treated the respondent's offer as a demotion and a unilateral and substantive change in her working conditions and terms of employment, which therefore constituted a constructive dismissal. She refused the offer and asked for an indemnity in lieu of notice; flight privileges with Swiss for six months; the destruction of her disciplinary letter and $25,000 of moral damages.

[5] On July 30, 2014, the respondent sent the applicant a letter confirming separation of employment as of July 31st of that year.

[6] Me Mark Abramowitz [adjudicator] heard the matter on June 28, 29 and 30, 2016, September 15 and 16, 2016, as well as January 17, 18, and 19, 2017. In a 32 page decision rendered on April 9, 2017, the adjudicator determined that the complaint was subject to the Code – despite the objection made by the employer that US law applied. Concluding that the employer's offer constituted a constructive dismissal, the adjudicator dismissed their objection that the applicant had voluntarily resigned. However, since the applicant was a "manager" within the meaning of subsection 167(3) of the Code, she could not benefit from the protection of Division XIV against unjust dismissal. Accordingly, the complaint was dismissed for lack of jurisdiction.

[7] This judicial review is exclusively focused on the finding that the applicant was a "manager", which is reviewable under the reasonableness standard (see *Wilson v Atomic Energy of Canada Ltd*, 2016 SCC 29 at paras 15-19; *Yue v Bank of Montreal*, 2016 FCA 107 at paras 4-6).

[8] The present application is dismissed with costs.

Preliminary matter with respect to the admissibility of the respondent's affidavits

[9] A preliminary matter has to be addressed prior to examining the evidence brought to the adjudicator's attention. Indeed, the applicant seeks the exclusion from the Court's record of the affidavits of Ms Carol Sullivan and Ms Helen Del Terzo – the employer's two representatives who testified before the adjudicator – because they were witnessed and commissioned by the respondent's in-house counsel in the United States.

[10] The request is denied.

[11] The two affidavits dated August 23 and 24, 2017 were sworn by Mr Arthur J. Molins. Besides being an attorney in good standing of the New York State Bar (No 1702539), Mr Molins is also a duly certified Notary Public from the State of New York (No 47311752), where taking the affidavit of your own client is explicitly permitted by law. Indeed, section 135 of the State of New York's *Executive Law*, NY Exec L § 135 (2015), provides that "[…] a notary public who is an attorney at law regularly admitted to practice in this State may, in his discretion, administer an oath or affirmation to or take the affidavit or acknowledgment of his client in respect of any matter, claim, action or proceeding. […]" [emphasis added].

[12] In addition, section 13 of the *Canada Evidence Act*, RSC 1985, c C-5, subsection 54(1) of the *Federal Courts Act*, RSC 1985, c F-7, and sections 215 and 220 of the *Courts of Justice Act*, CQLR, c T-16, specify who can administer oaths and receive affidavits. These provisions do not

indicate that affidavits cannot be sworn by an in-house counsel who has otherwise legal authority to act as a Commissioner of Oaths:

13 Every court and judge, and every person having, by law or consent of parties, authority to hear and receive evidence, has power to administer an oath to every witness who is legally called to give evidence before that court, judge or person.	13 Tout tribunal et tout juge, ainsi que toute personne autorisée par la loi ou par le consentement des parties à entendre et à recevoir des témoignages, peuvent faire prêter serment à tout témoin légalement appelé à déposer devant ce tribunal, ce juge ou cette personne.
54(1) All persons authorized to take and receive affidavits to be used in any of the superior courts of a province may administer oaths and take and receive affidavits, declarations and solemn affirmations to be used in the Federal Court of Appeal or the Federal Court.	54(1) Les personnes habilitées à recevoir des affidavits destinés à servir devant une cour supérieure provinciale peuvent faire prêter serment et recevoir les affidavits, déclarations et affirmations solennelles destinés à servir devant la Cour d'appel fédérale ou la Cour fédérale.
215. The Minister of Justice may also appoint, by commission under his seal, such persons as he deems competent and who reside in another province of Canada, in a Canadian territory or in another country, as commissioners to administer oaths therein for the purposes of proceedings in a court of this Province or of any deed or document to be implemented or to have legal effect in this Province.	215. Le ministre de la Justice peut également nommer, par commission sous son sceau, des personnes qu'il juge compétentes et qui résident dans une autre province du Canada, dans un territoire canadien ou dans un autre pays, commissaires pour y faire prêter le serment aux fins d'une procédure dans une cour de cette province ou d'un acte ou document qui doit y être mis à exécution ou y avoir des effets juridiques.
A person so appointed may, if the commission provides therefor, also administer oaths elsewhere than his place of residence and for other	Une personne ainsi nommée peut, si la commission le prévoit, faire également prêter le serment ailleurs qu'à l'endroit où elle réside et à

purposes than those contemplated in the first paragraph.	d'autres fins que celles prévues au premier alinéa.
A commissioner appointed under this section shall bear the title of "Commissioner for Oaths for the Province of Québec".	Un commissaire nommé en vertu du présent article porte le titre de « Commissaire à l'assermentation pour le Québec ».
220. The same force and effect as a deposition under oath before a commissioner appointed under section 215 shall be given to an affidavit made:	220. A la même validité et les mêmes effets qu'une déposition sous serment devant un commissaire nommé en vertu de l'article 215, une déposition sous serment :
[…]	[…]
(b) before a notary public under his hand and official seal;	b) devant un notaire public sous ses seing et sceau d'office;
[…]	[…]
[Emphasis added]	[Je souligne]

[13] Accordingly, the applicant's and the respondent's affidavits shall therefore be considered by the Court to the extent necessary to determine whether the adjudicator's findings of fact are supported by the testimonial and documentary evidence on record (see *Canada (Attorney General) v Select Brand Distributors Inc*, 2010 FCA 3 at paras 44-45 [*Select Brand Distributors*].

Evidence respecting the functions and responsibilities of the applicant as Country Manager Canada

[14] The respondent had the burden to prove to the satisfaction of the adjudicator that the applicant was a "manager" at the time of termination of her employment.

[15] More than 100 exhibits were filed before the adjudicator: exhibits A-1 to A-6 (adjudicator); exhibits P-1 to P-38 (applicant); and exhibits E-1 to E-60 (respondent). It also appears that seven out of the eight day hearing before the adjudicator was devoted to the adducing of oral evidence, none of which is available to this Court since the proceedings were not recorded. Be that as it may, part of this testimonial evidence respecting the functions and responsibilities of the applicant as Country Manager Canada can be reconstructed through the affidavits of Ms Sullivan and Ms Del Terzo who testified for the employer at the hearing, as well as from the affidavit of the applicant who also testified before the adjudicator.

[16] The applicant began her career in 2002 as an account manager for Crossair Ltd, for its operations in the United States. In 2003, following the taker over by Swiss of Crossair, she became an employee of Swiss. She saw her responsibilities progressively increase. Initially based in the United States, she was invited to accept the position of Country Manager Canada in September 2011, in which she would be notably responsible for Swiss' direct sales and marketing activities for the country. She accepted the offer.

[17] The applicant occupied the Country Manager Canada position on an interim basis between September 2011 and August 8, 2012, at which point the position became permanent.

According to the documentary evidence, the applicant was classified as a “Senior Manager”, while her employment level was that of a “Level 3B Manager” (exhibit E-10) with all corresponding benefits and advantages such as, *inter alia*, the “Cadre Flight, Captain Tickets” privileges (exhibit E-53). She reported solely and directly to Swiss’ Managing Director in Zurich.

[18] In practice, the applicant was literally the face of Swiss in Canada, and her official appointment in September 2012 as the “directrice générale de Swiss au Canada” was largely publicized at a press dinner held at the restaurant Ferreira Café in Montreal (exhibits E-32 and E-33). In the meantime, on November 17, 2011, Swiss executed and delivered a Power of Attorney, whereby the applicant was designated has Swiss’ authorized representative for all its operations in Canada (exhibit E-14), and which had full force and effect in Canada during the time of her employment (exhibit E-15).

[19] The Power of Attorney granted the applicant full powers “to do all acts on behalf of Swiss, which may be involved with the normal exercise of business activity for the branch of Swiss in Canada and in connection with the Bilateral Air Services Agreement concluded between Canada and Switzerland,” including but not limited to the following (exhibit E-14):

> a) To make any legitimate payment, to collect accounts or income from other sources of whatever nature;
>
> b) To open and close bank accounts and to dispose of the funds in the n;
>
> c) To conclude, alter and terminate any kind of contracts related to the performance of the activities of the branch;
>
> d) To acquire ownership of movable property and rights of any kind;

> e) To engage or dismiss personnel and sign the respective employment contracts and to deal with all business in connection with staff problems;
>
> f) To issue and sign documents and public and private instruments which may be necessarily for the execution of any act mentioned herein;
>
> g) To represent the branch before tax authorities, social insurance authorities, other competent authorities as well as before any other state or municipal authorities or private persons in the territory of Canada;
>
> h) To intervene and represent SWISS INTERNATIONAL AIR LINES LTD in any suit brought before any court in Canada to present petitions of any kind, to institute or desist from legal proceedings, to submit any case to arbitration, to make legal statements, to perform any act which may be necessary in the course of legal proceedings;
>
> i) To accept service of process and any notices on behalf of the company.

[20] According to the testimonies of Ms Del Terzo and Ms Sullivan, and as corroborated by the documentary evidence submitted by the employer, the applicant enjoyed a high level of managerial authority and was at the very top of Swiss Canada’s organization. She was responsible in Canada for a team of 12 people including account managers; management support sponsorships and interline personnel; direct and online sales personnel, customer service and support personnel (exhibit E-13). Moreover, the applicant was the company’s official and legal representative in Canada, and was known as such by the public and regulatory agencies (exhibits E-14, E-15, E-32 and E-33). She was the principal signing officer for the Montreal airport (exhibit E-15). She had the discretion to make binding decisions on matters of importance to Swiss in Canada. She was responsible for day-to-day management and administrative functions; she exercised powers of supervision and direction over all employees in Canada; she

was charged with evaluating staff performance, determining, recommending and confirming salary increases (subject to the Head Office's approval for some specific elements); she could select new hires and dismiss employees; she could evaluate employee performance (exhibits E-36 to E-46). She also had the discretion to allocate the operational budget for Canadian office, and benefitted from a transaction spending level of up to $49,999 (exhibit E-57).

[21] However, despite the broad wording of the Power of Attorney (exhibit E-14), the applicant took the position before the adjudicator that its content was not an accurate reflection of her actual situation. Indeed, she testified that she had not at any time hired or dismissed employees, determined the employees' salaries or disciplined personnel. She testified that she needed to sign timesheets; that the budget for the Montreal office was established by the head office and/or the Department of Finance; that she did not participate in the elaboration of the company policies, that ticket prices were determined by the head office; that she could not use the company credit card without prior approval from the head office and that the Montreal office could not organize a Christmas party without the authorization of the office. In her affidavit submitted to the Court, the applicant continues to hold that the position of Country Manager Canada did not involve any independent or autonomous authority, despite her title. She also questions the probative character of the testimonies of Ms Del Terzo and Ms Sullivan – two members of the respondent's Payroll and Human Resources team – who did not directly supervise her work in Canada.

Analysis of the adjudicator's decision: is it reasonable?

[22] As stated by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (see *Dunsmuir* at para 47).

[23] Considering that the word "manager" used in subsection 167(3) of the Code is not defined by Parliament, case law has remedied this shortcoming by enumerating a certain number of relevant criteria or factors to be considered to determine in which cases an employee holds or not a position of manager (see *Canadian Imperial Bank of Commerce v Torre*, 2010 FC 105 and case law cited at paras 13-16 [*Torre*]). Indeed, the word "manager" has a narrow meaning (see *Lee-Shanok v Banque Nazionale del Lavoro of Canada Ltd*, [1987] 3 FC 578, 5 ACWS (3d) 262 at paras 10-11 (FCA); *Attorney General of Canada v Gauthier*, [1980] 2 FC 393, 113 DLR (3d) 419 (FCA); *Avalon Aviation Ltd v Canada (Canada Labour Code)*, 8 ACWS (2d) 190, [1981] FCJ No 111 (QL) (FCA)). The fundamental test is whether that person has significant autonomy, discretion, and authority in the conduct of the business of the employer (see *Msuya v Sundance Balloons International Ltd*, 2006 FC 321 at para 23, citing *Isaac v Listuguj Mi'gmaq First Nation*, [2004] CLAD No 287, 2004 CarswellNat 7758 (Canada Adjudication)).

[24] I am satisfied that the decision-maker – an experienced adjudicator – was well aware of the applicable legal principles and directed himself accordingly as notably appears from paragraphs 46, 47 and 48 of the reasons. Relying on the decision that he himself had rendered in *Laderoute v Air Canada (Technical Services)*, 2008 CarswellQue 8357, DTE 2008T-575 (QCTA), and from which he quoted at length, the adjudicator accepted that the word "manager" must be read restrictively, that he must focus on reality rather than on the job title, and that relevant criteria include the possibility of making binding decisions on behalf of the company or make final recommendations; active participation in defining company policies; powers to provide employees directions; a role in discipline and hiring; etc.

[25] Today, the applicant essentially disagrees with the adjudicator's assessment of the evidence with respect to the scope of the responsibilities, functions and powers of decision vested in the applicant as Country Manager Canada. The applicant also questions the intelligibility of the adjudicator's reasons and rational character of the impugned finding. On the whole, I am satisfied that the dismissal of the complaint for lack of jurisdiction – because the applicant was a manager – constitutes a reasonable outcome in light of the applicable legal principles and evidence on record.

[26] The adjudicator's decision is transparent and intelligible. Applying the legal principles discussed earlier, the adjudicator – who also quotes and refers to the Power of Attorney (see paragraphs 9 and 49) – makes a number of key findings of fact at paragraphs 7, 8, 10 and 50 to 52, and which I reproduce in their entirety:

> 7 In her position as Country Manager, Canada, Ms. Cicale was responsible for a team of 12 persons including account managers;

management support sponsorships and interline personnel; direct and online sales personnel, customer service and support personnel. [E-13] According to Carol Sullivan, HR manager of North America service, Ms. Cicale was responsible for all employees' actions. She could recommend hiring and firing of personnel, although she needed to justify the need for additional employees with Swiss' head office. With regard to any discrepancies in personnel functions and sales, she had the power of final decision.

8 An advertisement of September 2014 for her position as "*Director, Head of Sales & Marketing Canada*" which became vacant upon her departure is significant with regard to the duties she fulfilled while in Montreal as the following excerpts attest:

> **Director, Head of Sales and Marketing Canada**
>
> The Director, Head of Sales and Marketing Canada, leads the Canada Core Team in Montreal consisting of 12 colleagues. In this position, you will represent SWSS in Canada in respect of all commercial aspects towards our customers, the Lufthansa GP organization and our local partners and suppliers. You report to the Head of Sales & Marketing the Americas in East Meadow, NY.
>
> [...] You are responsible for tangible actions in the areas of marketing, customer servicing, direct sales [...] and revenue management [...], in close co-ordination with the SWISS area management in New York and the worldwide Central Competence Centers in Zurich.
>
> **Your Duties**
>
> - Responsible for fulfilling the revenue target, meeting the cost-of-sales budget and monitoring agreed service levels with local partners and suppliers
> - Head and lead the SWISS Core Tam based in Montreal
> - Represent SWISS in the market place and marriage the relationship to our customers, local authorities and partners, inclusive Switzerland Tourism

- Develop and implement a strategic and tactical market plan [...] cooperation with the local GP organization to exploit market and revenue opportunities with a maximum revenue impact for SWISS at an attractive and optimized cost ratio

- Ensure a regular and structured monitoring and review of sales activities against plan together with the local Lufthansa GP organization

- [...]

- Act as the first point-of-entry and provide a balanced flow of relevant information between SWISS functions in Zurich and New York, the local Lufthansa GP organization and our Joint Venture (A++) partners

- [...]

- Implement and communicate innovative sales initiatives in the market, including Added Value Offers [P-1]

[…]

10 Ms. Cicale was also responsible for a team of 6 employees in the U.S. as "*Head of Sales & Marketing*". [E-16] She had, as per the testimony of Carol Sullivan, the final word in these matters for Canada, but the "*Country Manager*" of the U.S. had the final word on this subject [sic] for the U.S.

[…]

50 In addition, the proof revealed that Ms. Cicale had the authority to select new hires for the Montreal office provided that she made a valid "*business case*" to Swiss head office in Zurich as to their necessity. Personnel in Zurich did not evaluate the qualifications of the proposed new hires. Rather this was part of Ms. Cicale's functions. She regularly evaluated the goal achievement and performance of employees under her direction on an annual basis. [exhibits E-36 to E-46], and she also had power to determine and recommend salary increases for the personnel under her control although Zurich had the final say on the percentage of the recommended increase, within certain parameters. But, it was Ms. Cicale who was in charge of the budget allocation for the Montreal

> office. She was also the principal signing officer for Swiss at the Montreal Airport (E-15).
>
> 51 In accordance with the "*Cadre Flight, Captain Ticket of Swiss*, E-53, of which she benefited, Ms. Cicale was a "*Director*", having 10 years of service and she was also a "*Senior Manager* [sic]" given her length of service. As such, in virtue of the "*Financial Authority Regulation of Swiss*" (E-57) for *Members of the Board of Directors*" and "*Management Board*" she had a pre-approved contract and transaction spending level of $30,000 to $49,999. It is also noteworthy that in her complaint as filed with HRSDC she described her "*Job Title*" as "*Director*".
>
> 52 In view of the foregoing scope of the many responsibilities, functions, and powers of decision vested in Ms. Cicale as Country Manager Canada, as described in the Job Description (P-1) and the Power of Attorney (E-14), I am of the view that she was indeed a manager. Accordingly, given that under the terms of article 167(3) of the *Canada Labour Code* which stipulates that the application of Division XIV"*does not apply to or in respect of employees who are managers*", and this being the Division under which her complaint for unjust dismissal was filed, I have no further jurisdiction herein. The preliminary objection of her being a manager is, therefore, maintained and consequently Ms. Cicale's complaint of unjust dismissal is rejected.

[27] Before this Court, the applicant notes that the impugned finding that she is a “manager” is essentially based on the documentary evidence and on the oral testimonies of Ms Del Terzo and Ms Sullivan. The fundamental problem according to the applicant is that these witnesses had no direct knowledge of the applicant’s role and functions and did not directly supervise her work. In focusing on the advertisement of the position after she had left (exhibit P-1) and on the Power of Attorney (exhibit E-14), the adjudicator erred in fact by looking at the “theoretical” title, rather than at her actual situation, as depicted in her own testimony. For instance, the adjudicator erred with respect to her authorized spending level which was $4,999, and not $49,999 (exhibits E-18 and E-57). Furthermore, the adjudicator failed to address in his reasons key elements of the applicant’s testimony. All in all, the employer did not discharge herself of its burden of proving

that the applicant was indeed a manager: there was insufficient proof of her autonomy and discretion. The decision is therefore unreasonable and the matter must be remitted to the adjudicator so that he can deal with the unresolved issues.

[28] The respondent submits that the applicant is essentially trying to retry her case before the Federal Court, as all her grounds of review are based on the fact the adjudicator preferred the employer's representatives' testimonies which corroborate the overwhelming documentary evidence demonstrating that she was a "manager". Furthermore, the adjudicator did not have to comment on each piece of evidence and argument submitted by the parties, nor do his reasons have to be detailed, as long as the decision as whole is reasonable (see *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 13-16 [*Newfoundland Nurses*]). The adjudicator applied the relevant legal principles. The adjudicator rendered a transparent, properly articulated, and well-reasoned decision that is grounded in documentary and testimonial evidence. In the case at bar, the decision-maker here is a uniquely specialized labour adjudicator and enjoying a high degree of deference: he is in a better position than the Federal Court to assess the credibility of witnesses and evaluate the probative force of the evidence (see *Dunsmuir*). The impugned finding is therefore reasonable and should be maintained.

[29] I agree with the respondent.

[30] The conclusion that the applicant was a manager falls within the range of acceptable outcomes, given the applicable law and the evidentiary record before him (see *Dunsmuir* at

para 47). At the risk of repeating myself, the adjudicator's reasoning clearly supports the impugned finding and allows the Court and the parties to understand the foundation of his conclusion that the applicant was a "manager" as appears notably from the following determinative elements:

- The Power of Attorney gave the applicant full powers to act on behalf of Swiss, and make legally binding decisions; including, acquiring ownership of property, engage and dismiss personnel, opening and closing bank accounts, collecting payments, or representing Swiss before a Court (see exhibit E-14);
- The applicant had the authority to select new hires if she made a valid business case to the head office, and that personnel in Zurich did not evaluate their qualifications;
- The applicant regularly evaluated employees' achievements and performance (exhibits E-36 to E-46), and she had the power to determine and recommend salary increases: Zurich only had final say on the percentage of increase;
- The applicant was in charge of budget allocation for Montreal;
- The applicant was the principal signing officer for the Montreal airport (exhibit E-15);
- The applicant could be considered a Director and Senior Manager given her length of service (exhibit E-53). As such, according to Swiss' "Financial Authority Regulation," she had a pre-approved contract and

> transaction spending level between $30,000 and $49,999 (see exhibit E-57).

[31] The hearing lasted eight days and ninety exhibits were produced. This necessarily involved a process of synthesis when drafting reasons (see *Canada v South Yukon Forest Corp*, 2012 FCA 165 at paras 49-50). The adjudicator could not be expected to conduct a detailed examination of each arguments raised by the applicant (see *Newfoundland Nurses* at para 16). It can be inferred from the reasons that the adjudicator implicitly found the testimonies of the employer's representatives more convincing than the applicant – given their version was amply corroborated by the documentary evidence. Conversely, the applicant only relied on her own testimony to portray the "true version of reality". The applicant complains that the adjudicator could have been more explicit or complete, as he does not expressly explain why he does not believe or find her testimony not compelling. Be that as it may, this is not a sufficient ground, in this particular case, for finding the decision, as a whole, unreasonable (see *Newfoundland Nurses* at paras 13, 14-16). Moreover, the adjudicator did not make any reviewable error in giving more weight to the Power of Attorney (exhibit E-14) and to the Job Description (exhibit P-1). While the latter document concerns the job vacancy advertised after the applicant's employment ended, it nevertheless corroborates the documentary evidence and the other testimonies of the employer's representatives.

[32] To summarize, it was not unreasonable for the adjudicator to conclude that the applicant was a "manager" who had the power of independent action, autonomy and discretion. There is ample evidence on record to support the findings made with respect to personnel supervision and

evaluation, budget spending, discretion in hiring and dismissing employees, etc. It is clearly not this Court's role on judicial review to step in and challenge the adjudicator's assessment of witnesses' credibility, and his evaluation of documentary evidence (see *Select Brand Distributors* at paras 44-45). Despite the fact that another decision-maker or this Court may assess the evidence on record differently, absent any reviewable error, this Court owes considerable deference to the findings of fact made by the adjudicator.

Conclusion

[33] For all these reasons, this application for judicial review is dismissed. In view of the result, costs are in favour of the respondent.

JUDGMENT in T-691-17

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed with costs in favour of the respondent.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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