

Federal Court



Cour fédérale

Date: 20100727

Docket: T-1789-09

Citation: 2010 FC 785

Ottawa, Ontario, July 27, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

CAPTAIN FRANCOIS LEBLANC

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Captain François Leblanc seeks to overturn a decision of the Director General (DG) of the Canadian Forces Grievance Authority, in which the DG had found that it was not in the interests of justice to extend a 90-day deadline. Under the *Queen's Regulations and Orders for the Canadian Forces* (QR&O), a grievance must ordinarily be referred to the Final Authority (FA) within 90 days of receiving the decision of the Initial Authority (IA) (s. 7.10). Here, the DG was acting as the FA on Capt. Leblanc's grievance. The FA can extend the 90-day deadline where it would be in the

interests of justice to do so. Capt. Leblanc provided reasons for being late with his request, but the FA concluded that he did not show that the interests of justice lay in his favour.

[2] A DG's decision relating to a request for an extension of time is reviewable on a reasonableness standard (*Hudon v. Canada (A.G.)*, 2009 FC 1092). Therefore, the sole issue before me is whether the DG's decision was unreasonable.

II. Factual Background

[3] In February 2007, Capt. Leblanc filed a grievance alleging abuse of authority by his Commandant. In January 2008, the IA found that there was insufficient evidence to support Capt. Leblanc's allegation. Capt. Leblanc had 90 days from the date he received the IA's decision to forward his grievance to the FA. He says he received it on February 28, 2008. However, he did not refer his grievance until July 18, 2008, almost five months later.

[4] In February 2009, the FA forwarded Capt. Leblanc's grievance to the Canadian Forces Grievance Board (CFGB). The CFGB asked Capt. Leblanc to explain the delay in referring his grievance to the FA. Capt. Leblanc responded by stating that he had been involved in an intensive Army Operations Course (until June 26, 2008). In addition, he had been awaiting further disclosure of documents relating to his grievance.

[5] In July 2009, the CFGB submitted its findings to the DG (acting as the FA). The CFGB found that Capt. Leblanc's reasons for having referred his grievance to the FA out of time were not valid. In turn, the DG considered Capt. Leblanc's reasons and, on September 14, 2009, concluded that they did not justify an extension. It is this decision that Capt. Leblanc asks the Court to review.

III. The DG's Decision

[6] The DG noted that time limits should not be departed from lightly. One must consider the particular circumstances of the griever and the overall interests of fairness.

[7] The DG found that the Army Operations Course, while intensive, did not preclude Capt. Leblanc from pursuing his grievance in a timely manner. Students have time to attend to personal matters while on the course. In addition, inadequate disclosure did not prevent Capt. Leblanc from pursuing the remedies available to him. In fact, he did so anyway before receiving the disclosure he had sought.

(1) Was the DG's Decision Unreasonable?

[8] Capt. Leblanc maintains that the DG's decision was unreasonable because it failed to take account of the realities of the training course he was pursuing at the relevant time and the problems he was having in obtaining disclosure of necessary information. In effect, he says, the delay was partly caused by the failure of the Canadian Forces to respect their disclosure obligations. Capt.

Leblanc also contends that the DG did not appear to understand that his grievance related to a fundamental issue affecting the integrity of the Canadian Forces: an alleged abuse of authority by a senior officer.

[9] The burden fell on Capt. Leblanc to persuade the DG that the interests of justice justified an extension of time. However, Capt. Leblanc merely stated that he was busy on his Army Operations Course and was awaiting further disclosure. In light of the insubstantial submissions before him, I can find nothing unreasonable in the DG's decision that Capt. Leblanc had not demonstrated that the interests of justice warranted an extension of time.

[10] At the heart of Capt. Leblanc's grievance and his application for judicial review lies a genuine concern and respect for the Canadian Forces and the Government of Canada. To his credit, Capt. Leblanc has tried to ensure that the letter and spirit of the laws and regulations applicable to the Canadian Forces are scrupulously observed. He suggests that the DG should have recognized and taken account of the gravity of his grievance before deciding that the interests of justice did not justify an extension.

[11] The DG was clearly aware of the substance of Capt. Leblanc's complaint. But the DG rightly observed that an extension of time is "not an instrument to be used lightly". As Justice Richard Boivin stated, if extensions are granted too easily, the referral remedy "would be quickly short-circuited and rendered meaningless" (*Hudon*, above, para. 27). Such an outcome would run counter to the objectives Capt. Leblanc has sought to achieve.

[12] Accordingly, I cannot find that the DG's decision was unreasonable.

IV. Conclusion and Disposition

[13] Based on the submissions before him, I cannot conclude that the DG's decision - that it was not in the interests of justice to extend the deadline for referring a grievance to the FA - was unreasonable. It fell within "a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, para. 47). I must, therefore, dismiss this application for judicial review.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1789-09

STYLE OF CAUSE: LEBLANC v. AGC

PLACE OF HEARING: Halifax, N.S.

DATE OF HEARING: May 12, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: July 27, 2010

APPEARANCES:

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