Federal Court  Cour fédérale

Date 20121102

Docket: T-918-12

Citation: 2012 FC 1286

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 2, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

MARIE MACHE RAMEAU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] By this motion, the applicant is asking this Court to make a show cause order against the President of the Canadian International Development Agency (CIDA) pursuant to section 467 of the *Federal Courts Rules* (Rules) on the basis that the President is allegedly in contempt of court. An allegation of contempt of court is criminal, or at least quasi-criminal, in character (*Bhatnager v Canada (Minister of Employment and Immigration*), [1990] 2 SCR 217) and may lead to imprisonment.

[2] According to the applicant, the alleged contempt of court stems from CIDA's failure to honour certain undertakings set out in an agreement dated November 29, 2006, between CIDA and the applicant.

[3] This agreement was made an order of this Court by Justice Pinard on May 29, 2012, under subsection 48(3) of the *Canadian Human Rights Act*.

[4] On the basis of this agreement, CIDA paid the applicant sums of money. The applicant was also appointed on an acting basis to a position at the PE-4 group and level, and she was assigned to a position in the Public Service Commission (PSC) under an assignment agreement between the PSC and CIDA. This twelve (12)-month assignment to the PSC ran from February 15, 2007, to February 14, 2008. During that period, CIDA covered the applicant's wages and benefits as provided in paragraph 5 of the agreement.

[5] The agreement was then renewed for another twelve (12) months, but this time the PSC covered the applicant's wages and benefits.

[6] On February 16, 2009, when the second assignment period ended, the applicant was reinstated in her position at CIDA at the PE-3 level.

[7] The applicant alleges that under paragraph 6 of the agreement, she is entitled to be reinstated in a PE-4 position, but CIDA disagrees. Paragraph 6 of the agreement is the central issue in this case.

[8] The applicant therefore submits that the President of CIDA is in contempt of court for not honouring the agreement of November 29, 2006, which has been made an order.

Issue

[9] The Court must answer the following question: Should a show cause order be made against the President of CIDA?

[10] For the reasons that follow, the Court is of the opinion that the question must be answered in the negative.

Analysis

[11] At the beginning of the hearing, Mr. Létourneau confirmed to the Court that he was acting in this case as agent of the solicitor of record, Yavar Hameed.

[12] First, it is important to note that the applicant's motion under rule 467 seeks a show cause order, that is, an order requiring the President of CIDA to appear before a judge and to be prepared to hear proof of the act with which she is charged and present any defence that she may have. The applicant's burden of proof at this stage is met by making a *prima facie* case for the alleged contempt.

[13] Justice Russell has stated that a motion for a show cause order, as in the present case, "requires proof of a Court order, proof of the respondent's knowledge of the order, and proof of deliberate flouting of the order" (*Angus v Chipewyan Prairie First Nation Tribal Council*, 2009 FC 562, [2009] FCJ no 757 (QL)).

[14] First of all, it should be noted that at the hearing before this Court, there was some question as to whether the motion for a show cause order under section 467 of the Rules was served on the President of CIDA in accordance with the direction of Justice Pinard dated October 9, 2012. However, a verification of the Court record clearly shows that the applicant's motion was served on the President of CIDA personally.

[15] The Court now turns to paragraph 6 of the agreement, which is, as was mentioned above, the central issue in this case.

[16] The Court notes that the parties are relying on two different interpretations of paragraph 6 of the agreement. Paragraph 6 reads as follows:

> [TRANSLATION]
> 6. If the complainant is unsuccessful in the training during the first six months of her assignment to the Public Service Commission, she will return to a PE-3 position at the respondent. The respondent undertakes to offer her 18 months of training. If the complainant receives a positive quarterly appraisal based on clear and precise objectives and on the assessment criteria, the complainant will be appointed at the PE-4 level through a non-advertised process at the end of the 18-month training period.

[17] The applicant argues that under paragraph 6, CIDA undertook to provide her with eighteen (18) months of training and to appoint her to a PE-4 position through a non-advertised process regardless of the date of her eventual return to CIDA, while the respondent interprets paragraph 6, when read together with paragraphs 4 and 5, as being limited in time and as not applying unless the applicant returned to CIDA in the first six (6) months. Relying on the affidavit of Mario Sabourin (Respondent's Motion Record, Tab 1), a witness to the agreement, counsel for the respondent argues that paragraph 6 should be interpreted as a "Plan B" in case the applicant was unsuccessful in her training at the PSC.

[18] In the present case, the evidence does not show that the applicant was unsuccessful in her training in the first six (6) months of her assignment to the PSC. On the contrary, she successfully completed her training, and her assignment was renewed. Moreover, the Court notes that in an email dated February 7, 2008, the applicant states her intention to continue her career at the PSC (Respondent's Motion Record, Tab C).

[19] Having heard the parties, the Court must observe that a difference in interpretation was raised and that it is therefore not clear what the parties must do to comply. In a similar scenario, the Federal Court of Appeal stated that "[i]t must be clear on the face of the order what is required for compliance" (*Telecommunications Workers Union v Telus Mobility*, 2004 FCA 59 at paragraph 4, [2004] FCJ no 273 (QL)), which is not the case here. Moreover, Justice Hansen of this Court has noted that "the fact that the Order is ambiguous precludes a finding of contempt . . ." and that an alleged contemnor "is entitled to the most favourable interpretation" (*Sherman v*

Canada (Customs and Revenue Agency), 2006 FC 1121 at paragraphs 29 and 14, [2006] FCJ no 1413 (QL)).

[20] Finally, the facts in this case do not allow the Court to find, as the applicant argued at the hearing, that the way the negotiations between the applicant and CIDA were conducted under paragraph 16 of the agreement constitutes contempt. The applicant also argued that the President of CIDA personally violated the order at issue. The evidence does not allow the Court to agree with this argument either.

[21] For all these reasons, the Court is of the opinion that, in the circumstances, the applicant has not discharged her burden of making a *prima facie* case.

ORDER

THE COURT ORDERS that

1. The applicant's motion be dismissed.

2. The applicant must pay the respondent a total of $500 in costs.

"Richard Boivin"

Judge

Certified true translation
Michael Palles

Federal Court  Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-918-12
STYLE OF CAUSE:	Marie Mache Rameau v AGC
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	October 30, 2012
REASONS FOR ORDER:	BOIVIN J.
DATED:	November 2, 2012

APPEARANCES:

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Benoît de Champlain	FOR THE RESPONDENT

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