Federal Court of Appeal | Cour d'appel fédérale

Date: 20150909

Docket: A-530-14

Citation: 2015 FCA 188

CORAM: **TRUDEL J.A.**
BOIVIN J.A.
DE MONTIGNY J.A.

BETWEEN:

CLAUDIA GAL

Applicant

and

CANADA REVENUE AGENCY

Respondent

Heard at Ottawa, Ontario, on September 9, 2015.

Judgment delivered from the bench at Ottawa, Ontario, on September 9, 2015.

REASONS FOR JUDGMENT OF THE COURT BY: TRUDEL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Ottawa, Ontario, on September 9, 2015.)

TRUDEL J.A.

[1] The Public Service Labour Relations Board (the Board) dismissed the complaint (dated January 30, 2012) brought by Claudia Gal under section 190 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 (the Act). Ms. Gal alleges that her employer refused to consider her applications for acting appointments because she was carrying out union duties.

[2] She is now seeking judicial review of the Board's decision and submits that the Board committed many errors of fact and of law warranting the Court's intervention. Two of the errors are worth dealing with here.

[3] First, the applicant submits that she was not given a fair and equitable hearing in that the Board asked her to submit her evidence before the employer had even discharged its burden.

[4] According to the applicant, subsection 191(3) of the Act reverses the burden of proof, because the written complaint in respect of the alleged failure "is itself evidence that the failure actually occurred and, if any party to the complaint proceedings alleges that the failure did not occur, the burden of proving that it did not is on that party". In paragraph 46 of her memorandum of fact and law, the applicant goes on to state that the Board's decision to require that she present her evidence first, [TRANSLATION] "despite the detailed allegations in her complaint, and without reason or justification, was . . . a violation of her right to procedural fairness".

[5] We do not agree with this argument. The Board is master of its own procedure. In this matter, it decided to reject the procedural objection made by the applicant at the start of the hearing and consequently invited her to present her evidence before the employer presented its evidence. We do not have the Board's written reasons for this decision, but the record allows us to infer that the complaint was not as straightforward as the applicant suggests, which may have influenced the Board's decision.

[6] In any event, even if the applicant were right and her complaint clear-cut, we would note that she has not demonstrated any prejudice. Furthermore, after the employer presented its evidence, the applicant made no effort to recall witnesses or to adduce additional evidence in reply, as the Board invited her to do.

[7] While it is true that issues of procedural fairness are reviewable on a standard of correctness, the standard of review applicable to an allegation of procedural unfairness concerning the content of the duty of fairness in a particular context is more nuanced (*Re:Sound v. Fitness Industry Council of Canada*, 2014 FCA 48, [2015] 2 F.C.R. 170, at paragraphs 34-42).

[8] In the matter at bar, irrespective of the applicable standard of review, we have not been satisfied that, in proceeding as it did and inviting the applicant to present her evidence at the beginning of the hearing, the Board committed an error in law or any other error.

[9] The applicant further argues that the Board erred in law when it found that it could not consider certain facts described in the complaint because they occurred over 90 days before the complaint was filed. According to the applicant, the Board erred in restricting its review of the complaint solely to the events that took place between October 31, 2011, and January 30, 2012. The applicant submits that the prior events were a series of incidents adduced by her to [TRANSLATION] “establish the employer’s anti-union intent or attitude” (applicant’s memorandum, at paragraph 55).

[10] A close reading of the Board's reasons does not support this argument. It is clear that the Board sought to determine whether the applicant was discriminated against contrary to subsection 186(2) of the Act during the relevant period. That was its role. But it is also clear that the Board listened to the applicant's complaints. At paragraph 8 of its decision, it is stated: "I have chosen to not reproduce Mr. Chouinard's alleged actions or words, qualified as intimidating, as they were without consequence and uncorroborated and they occurred well before October 31, 2011". The Board heard all the evidence. In exercising its discretion, it gave this evidence the weight it considered appropriate and found the employer's evidence to be more credible (see paragraphs 38 and following of the Board's decision). The intervention of the Court is therefore not warranted. Lastly, the applicant must also fail with respect to the other errors of fact or mixed fact and law alleged by her.

[11] Consequently, the application for judicial review will be dismissed with costs.

"Johanne Trudel"

J.A.

Certified true translation
Erich Klein

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-530-14
STYLE OF CAUSE:	CLAUDIA GAL v. CANADA REVENUE AGENCY
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	SEPTEMBER 9, 2015
REASONS FOR JUDGMENT OF THE COURT BY:	TRUDEL J.A. BOIVIN J.A. DE MONTIGNY J.A.
DELIVERED FROM THE BENCH BY:	TRUDEL J.A.

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