

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160315

Docket: A-262-15

Citation: 2016 FCA 81

[ENGLISH TRANSLATION]

**CORAM: PELLETIER J.A.
GAUTHIER J.A.
SCOTT J.A.**

BETWEEN:

MARIE-ANNE JEAN

Appellant

and

SOCIÉTÉ RADIO-CANADA

Respondent

Heard at Montréal, Quebec, on March 10, 2016.

Judgment delivered at Ottawa, Ontario, on March 15, 2016.

REASONS FOR JUDGMENT BY:

SCOTT J.A.

CONCURRED IN BY:

**PELLETIER J.A.
GAUTHIER J.A.**

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REASONS FOR JUDGMENT

SCOTT J.A.

[1] This is an appeal before the Court from a decision rendered on April 28, 2015 (2015 FC 541) by Gagné J. of the Federal Court (the Judge), whereby she dismissed the application for judicial review of a decision rendered on January 3, 2013, by the Canadian Human Rights Commission (the Commission) rejecting the complaint filed by Marie-Anne Jean (the appellant) under subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, R.S.C., 1985,

c. H-6. After an investigation, the Commission dismissed the complaint because the evidence gathered did not support the claim that the Société Radio-Canada (Radio-Canada) had discriminated against the appellant because of her age when it refused to consider her for a closed caption editor position in 2007.

[2] Before the Commission, the appellant submitted, among other things, that her employer, Radio-Canada, purposely gave her a failing grade on her French exam with the complicity of staff from Human Resources. She submitted that the letter informing her of her results showed that her marks had been tampered with given the different font used to enter her grade. She also asserted that some witnesses had lied to the Commission investigator and that emails had been sent in her name, thereby usurping her identity. She further claimed that the handwritten notes and exam copies produced by Radio-Canada had also been falsified.

[3] A Commission investigator looked into these submissions and recommended dismissal of the complaint for the following reasons: i) the applicants for the position had been evaluated in accordance with the same criteria; ii) the testimony given by Mr. Tremblay, the manager responsible for closed caption editing, and by Mr. Bernard, the appellant's union representative, contradicted the appellant's submission that Mr. Tremblay had admitted that the selection criteria had been changed; iii) the two emails sent by the appellant on June 20, 2007, after a feedback meeting with them proved that she had acknowledged her mistakes and that she had written both emails; and iv) the explanation given by Radio-Canada regarding the different font used to enter her grade was plausible. Lastly, the investigator's report concluded that the appellant had not shown a connection between her age and her failure to obtain the position sought.

[4] Before the Judge, the appellant submitted that the Commission investigator had breached his duty of procedural fairness because he had failed to question a key witness in the case, Ms. Tanguay, who was present at the feedback meeting. She also claimed that he had not responded to all of her claims or considered certain elements of the evidence that she had presented. She also alleged that he had failed to disclose all of the evidence produced by Radio-Canada as soon as he received it. She further asserted that the investigator himself had lied by stating that she had acknowledged writing emails on June 20, 2007, after the feedback meeting. The appellant also submitted that a decision made on the basis of a deficient investigation was clearly unreasonable.

[5] The Judge applied the appropriate standards of judicial review with respect to the issues raised by the appellant as she addressed the issue of breach of procedural fairness on the correctness standard and applied the reasonableness standard to the Commission's decision to dismiss the complaint.

[6] This Court has to determine whether the Judge correctly applied these standards. To do this, it must focus on the Commission's decision (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at paragraphs 45 to 47).

[7] It is my opinion that the appellant did not offer convincing evidence to prove the existence of fraud as she argues in this case. The grounds for appeal as stated by the appellant and her claim of a breach of procedural fairness cannot succeed because the case law is well settled: an investigator controls his inquiry insofar as he acts meticulously and impartially. The

investigator had no obligation to immediately share the evidence that he received from Radio-Canada or to meet with the witness, Ms. Tanguay, because the submission of the handwritten notes that she took at the feedback meeting made it unnecessary for him to do this. The same applies to the appellant's claim that he had to confront the Radio-Canada representative with each of the allegations contained in the appellant's affidavit (see *Slattery v. Canada (Human Rights Commission)*, [1994] 2 FC 574, at pages 600, 601 and 605 (Trial Division), [1994] F.C.J. No. 181, affd (1996), 205 N.R. 383 (F.C.A.)). The Commission's investigation report considered all of the evidence presented by the parties and the appellant was afforded the opportunity to respond. The report supports the conclusion of the Judge's conclusions, who ruled that there were no breaches of procedural fairness in the investigation.

[8] The Commission's decision to dismiss the appellant's complaint was reasonable given the investigator's report and the parties' submissions after it was produced. Given the lack of probative evidence showing that the appellant was not granted the position sought because of her age, the Commission's decision to dismiss this complaint falls within the range of possible outcomes.

[9] In my view, this appeal should be dismissed with costs.

“A.F. Scott”

J.A.

“I agree.

J.D. Denis Pelletier J.A.”

“I agree.

Johanne Gauthier J.A.”

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-262-15

STYLE OF CAUSE: MARIE-ANNE JEAN v.
SOCIÉTÉ RADIO-CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 10, 2016

REASONS FOR JUDGMENT BY: SCOTT J.A.

CONCURRED IN BY: PELLETIER J.A.
GAUTHIER J.A.

DATED: MARCH 15, 2016

APPEARANCES:

Marie-Anne Jean FOR THE APPELLANT:
(representing herself)

Marie Pedneault FOR THE RESPONDENT

SOLICITORS OF RECORD:

Société Radio-Canada FOR THE RESPONDENT
Montréal, Quebec