

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160314

Docket: A-481-14

Citation: 2016 FCA 82

**CORAM: NOËL C.J.
STRATAS J.A.
RENNIE J.A.**

BETWEEN:

GORDON TETI

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on March 14, 2016.
Judgment delivered from the Bench at Toronto, Ontario, on March 14, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on March 14, 2016).

STRATAS J.A.

[1] The appellant asks this Court to set aside a judgment of the Federal Court dated October 16, 2014 (*per* Hughes J.), grant his application for judicial review, and quash an adjudicator's decision dated September 19, 2013: 2013 PSLRB 112. The adjudicator, acting under the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2, dismissed the appellant's four grievances.

[2] At the outset of this appeal, the appellant sought to introduce evidence that was not before the adjudicator, as he did in the Federal Court and as he did in interlocutory motions in this Court. This new evidence is not admissible: *Connolly v. Canada (Attorney General)*, 2014 FCA 294, 466 N.R. 44; *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263; *Association of Universities and Colleges of Canada v. Access Copyright*, 2012 FCA 22, 428 N.R. 297 at paragraph 11; *Collins v. Canada*, 2014 FCA 240, 466 N.R. 127.

[3] The Federal Court properly selected reasonableness as the standard of review. The adjudicator's decision is a factually-suffused one made under his home statute and protected by a strong privative clause: *Public Service Labour Relations Act*, ss. 51(1); *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paras. 52-54; *Exeter v. Canada (Attorney General)*, 2014 FCA 251, 465 N.R. 346.

[4] Our remaining task on appeal is to assess whether the Federal Court properly conducted reasonableness review. The Federal Court found that the adjudicator acted within his margin of appreciation with an acceptable and defensible basis for dismissing each of the four grievances before him. We agree with the Federal Court.

[5] Administrative decision-makers, such as the adjudicator in the circumstances of this particular case, normally enjoy a relatively broad margin of appreciation when they make factually-suffused decisions within a specialized employment context: *Canada (A.G.) v. Kane*, 2012 SCC 64, [2012] 3 S.C.R. 398; *Canada (Attorney General) v. Boogaard*, 2015 FCA 150. In conducting reasonableness review, we are not to make the decision the adjudicator should have

made or assess what the Tribunal did against what we might have done. Parliament has given the adjudicator—not us—the responsibility of determining cases like this one. Thus, we are restricted to merely a reviewing role and, in cases such as this, that role is a deferential one.

[6] In careful, detailed reasons the adjudicator applied the statutory standards and criteria in the Act and the jurisprudence of other adjudicators to the evidence before him and dismissed the grievances. The appellant has not persuaded us that the dismissal of the grievances was unreasonable.

[7] Before us, the appellant submits that the Federal Court erred in not dealing with particular submissions he made on the standard of review. We disagree. It seems clear that by selecting reasonableness as the standard of review, the Federal Court rejected the appellant’s submissions that it should review the adjudicator’s decision for correctness.

[8] Much of the appellant’s memorandum attacks certain interlocutory decisions in the Federal Court, on occasion relying upon constitutional provisions. Those interlocutory decisions—not appealed—are now final. They cannot be the subject of debate in this appeal.

[9] Therefore, for the foregoing reasons, we will dismiss the appeal. Fairly, in light of the “no costs” disposition of the Federal Court, the respondent does not ask for costs on appeal. Thus, none shall be awarded.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-481-14

APPEAL FROM A JUDGMENT AND REASONS OF THE HONOURABLE MR. JUSTICE HUGHES OF THE FEDERAL COURT DATED OCTOBER 16, 2014, DOCKET NO. T-1735-13.

STYLE OF CAUSE: GORDON TETI v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: MARCH 14, 2016

REASONS FOR JUDGMENT OF THE COURT BY: NOËL C.J.
STRATAS J.A.
RENNIE J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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